No. 7344

Vol 1823

United States Circuit Court of Appeals

For the Ninth Circuit.

WELLS FARGO BANK & UNION TRUST CO., a Corporation,

Appellant,

vs.

WILLIAM C. McDUFFIE, as Ancillary Receiver of Richfield Oil Company of California,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Parker Printing Company, 545 Sansome Street, San Francisco.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States,
Northern District of California,
Southern Division.

No. 2758-K in Equity

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation,

Complainant,

vs.

RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation,

Defendant.

WILLIAM C. McDUFFIE, as ancillary receiver of Richfield Oil Company of California, a corporation,

Complainant,

vs.

WELLS FARGO BANK & UNION TRUST CO., a corporation,

Defendant.

ANCILLARY BILL OF COMPLAINT

By leave of court first had and obtained, William C. McDuffie, as ancillary receiver for Richfield Oil Company of California, a corporation, brings this his bill of complaint against Wells Fargo Bank & Union Trust Co., a corporation, and alleges as follows:

I.

That complainant, The Republic Supply Company of California, is a corporation duly organized

and existing under the laws of the State of California; that its office and principal place of business is in the City of Los Angeles, State of California, and that it is a citizen and resident of the State of California. [1*]

II.

That defendant, Richfield Oil Company of California, is a corporation duly organized and existing under the laws of the State of Delaware; that its office and principal place of business is in the City of Los Angeles, State of California, and that it is a citizen and resident of the State of Delaware.

III.

That defendant, Wells Fargo Bank & Union Trust Co., is a corporation duly organized and existing under and by virtue of the laws of the State of California; that its principal place of business is in the City and County of San Francisco, State of California, and that it is a citizen and resident of said State of California.

IV.

That on January 15, 1931, said The Republic Supply Company of California, a corporation, filed an action numbered S-125-J in the District Court of the United States in and for the Southern District of California, Central Division, against said Richfield Oil Company of California, a corporation. That said bill of complaint alleged that said complainant

*Page numbering appearing at the foot of page of original certified Transcript of Record.

was a California corporation and the said defendant was a Delaware corporation. That said bill of complaint further alleged that said defendant was indebted to said complainant in a sum in excess of $275,000 upon an unsecured open book account for goods, wares and merchandise sold and delivered by said complainant to said defendant. That said bill of complaint further alleged that certain other creditors were pressing said defendant for payment of their claims and threatening attachments, executions, seizures and forced sales of the property of said defendant, with the necessary consequence that said defendant would be compelled to cease its business and that its assets, if sacrificed, might not realize an amount sufficient to pay the creditors of said defendant in full. That said bill of complaint prayed that the rights of all creditors of said defendant be determined and that meanwhile a receiver be appointed of all of the property and assets of said defendant and continue to carry on the business conducted by said defendant, and that an injunction [2] issue against said defendant, its creditors, stockholders and all persons claiming or acting by, through or under them, to restrain them from interfering in any manner with said receiver or taking possession of the property and assets of said defendant and carrying on and conducting its business.

That said defendant formally appeared and filed its answer to said bill of complaint, admitting the

allegations of said bill and consenting to the relief demanded. That upon the same day that the action was commenced, said Court appointed William C. McDuffie as receiver for Richfield Oil Company of California, a corporation, with the powers and duties as to such receivership more fully set forth in the order appointing said receiver, which was duly signed by the Honorable William P. James, United States District Judge then presiding in said Court, at 9:40 A. M. on January 15, 1931, a copy of which order is hereunto annexed, marked Exhibit "A" and made a part hereof. That pursuant to said order, said William C. McDuffie, on said 15th day of January, 1931, duly qualified as such receiver and ever since has been and is now the duly appointed, qualified and acting receiver for said Richfield Oil Company of California, a corporation.

V.

That thereafter, and on said 15th day of January, 1931, in the action of The Republic Supply Company of California, a corporation, Complainant, v. Richfield Oil Company of California, a corporation, Defendant, duly filed in the District Court of the United States in and for the Northern District of California, Southern Division, No. 2758-K, said William C. McDuffie was appointed ancillary receiver by the Honorable Frank H. Kerrigan, United States District Judge in and for said Northern District of California, Southern Division, of all the property, assets and business of said defendant in the Northern District of California. That a copy of said order appointing said William C. McDuffie such

ancillary receiver is hereunto annexed, marked Exhibit "B" and made a part hereof. That pursuant to said order, and on the 20th day of January, 1931, said William C. McDuffie filed his oath of office with the Clerk of the United States District Court in said District and duly qualified as such ancillary receiver and ever since said time has been and is now the duly appointed, qualified and acting ancillary receiver of and for said [3] Richfield Oil Company of California, a corporation, within said Northern District of California.

VI.

That on or about the 12th day of July, 1930, said Richfield Oil Company of California, a corporation, by authorization of its Board of Directors, borrowed from said defendant, Wells Fargo Bank & Union Trust Co., a corporation, the sum of $625,000 and at that time made, executed and delivered to said Wells Fargo Bank & Union Trust Co., or order, its promissory note in the principal sum of $625,000, with interest thereon at the rate of six per cent (6%) per annum, payable ninety (90) days after date. That no agreement of any kind for collateral or as security for the repayment of said amount was executed then and there by said Richfield Oil Company of California, a corporation, to or for the benefit of said Wells Fargo Bank & Union Trust Co., a corporation.

VII.

That thereafter, and on or about the month of August, 1930, an agreement was entered into by

and between said Richfield Oil Company of California, a corporation, and said Wells Fargo Bank & Union Trust Co., a corporation, whereby said Richfield Oil Company of California, a corporation, agreed to deposit with said Wells Fargo Bank & Union Trust Co., a corporation, for collection, drafts drawn by said Richfield Oil Company of California on certain of its customers residing in foreign countries, which drafts were drawn for payment of certain shipments of commodities by said Richfield Oil Company of California, a corporation, to said customers. That it was then and there further agreed by and between said Richfield Company of California, a corporation, and said Wells Fargo Bank & Union Trust Co., a corporation, that said arrangement for the collection of said foreign drafts by said Wells Fargo Bank & Union Trust Co. was separate and distinct from any other financial transactions between said parties.

That pursuant to said agreement, said Richfield Oil Company of California, a corporation, thereafter deposited with said Wells Fargo Bank & Union Trust Co., a corporation, certain of its foreign drafts for collection, [4] among which were the following drafts deposited on or about October 8, 1930:

> Draft No. 103005, dated October 8, 1930, drawn by said Richfield Oil Company of California, a corporation, on Birla Brothers, Ltd., at Calcutta, India, in the sum of $63,950, payable at 180 days sight;

Draft No. 103006-B, dated October 8, 1930, drawn by said Richfield Oil Company of California, a corporation, on Birla Brothers, Ltd., at Calcutta, India, in the sum of $55,900.75, payable at 180 days sight.

That each of said drafts was thereafter duly accepted for payment by said drawee and thereafter became due and payable on May 14, 1931.

That in addition to the two drafts hereinabove set forth, said Richfield Oil Company of California, a corporation, thereafter deposited with said Wells Fargo Bank & Union Trust Co., a corporation, for collection, its draft drawn on Birla Brothers, Ltd., Calcutta, India, in the sum of $23,607.50, which said draft matures for payment on August 19, 1931.

VIII.

That thereafter, and during the months of October and November, 1930, said Richfield Oil Company of California, a corporation, borrowed from said Wells Fargo Bank & Union Trust Co., a corporation, the sums of approximately $155,000, the repayment of which was secured by all said foreign drafts and/or the proceeds thereof of Richfield Oil Company of California, a corporation, then deposited with said Wells Fargo Bank & Union Trust Co., a corporation, and all future foreign drafts and/or the proceeds thereof that might thereafter be placed by said Richfield Oil Company of California, a corporation, with said Wells Fargo Bank & Union Trust Co., a corporation, for collection.

That at the times said sums aggregating approximately $155,000 were so advanced by said Wells Fargo Bank & Union Trust Co., a corporation, it was again then and there agreed by said Bank with said Richfield Oil Company of California, a corporation, that these loans were and would be considered by said Bank and by said Richfield Oil Company of California, a corporation, entirely distinct and separate and apart from any and all other financial transactions between said parties.

That thereafter, and prior to the 15th day of January, 1931, the whole of said sums aggregating approximately $155,000 so borrowed by said Richfield [5] Oil Company of California, a corporation, from said Wells Fargo Bank & Union Trust Co., a corporation, on said drafts and secured thereby, was repaid to said Wells Fargo Bank & Union Trust Co., a corporation, by said Richfield Oil Company of California, a corporation, and said Bank now has no claim for said sum or any part thereof, or upon any of said drafts so deposited for collection or the proceeds thereof.

IX.

That after the appointment and qualification of said William C. McDuffie as receiver for said Richfield Oil Company of California, a corporation, as aforesaid, and on or about the 28th day of March, 1931, said Wells Fargo Bank & Union Trust Co., a corporation, filed with said receiver its proof of claim, which alleged that said

"Richfield Oil Company of California, a corporation, was on the 15th day of January, 1931, and at the time of the appointment of the Receiver herein and still is, justly and truly indebted to said claimant in the sum of Six Hundred Thirty-six Thousand One Hundred Eighty-nine and 95/100 Dollars ($636,189.95);

The basis of said debt is as follows:

Moneys loaned by claimant to said Richfield Oil Company of California at its special instance and request, evidenced by promissory note dated July 12, 1930, copy of which said promissory note is attached hereto marked Exhibit 'A' and made a part hereof;

Interest on said promissory note from November 30, 1930, to March 16, 1931, at the rate of six per cent (6%) per annum, and accruing interest until paid;

Moneys paid by claimant at the special instance and request of said Richfield Oil Company of California for attorneys fees and preparation of indenture on behalf of creditor banks in the sum of $91.28, together with interest thereon from the 11th day of February, 1931, to the 16th day of March, 1931, at the rate of six per cent (6%) per annum, and accruing interest until paid;

Moneys paid by claimant at the special instance and request of said Richfield Oil Company of California for legal expenses in the sum of $56.39, together with interest thereon

from the 4th day of March, 1931, to the 16th day of March, 1931, at the rate of six per cent (6%) per annum, and accruing interest until paid;

That there are no offsets or counterclaims to said debt; no notes or other evidences of indebtedness have been taken or received except those of which copies are hereto attached; no Judgment has been rendered for such indebtedness or any part thereof; and no claim to preference in payment from the receivership estate is made;

That no securities are held by said claimant for said indebtedness." [6]

That no note or other evidence of indebtedness, other than a copy of said note dated July 12, 1930 in the principal sum of $625,000, was attached to said proof of claim.

X.

That said two foreign drafts dated October 8, 1930, hereinabove set forth in paragraph VII hereof, became due and payable by said drawee on the 14th day of May, 1931, and at said time, said drawee, Birla Brothers, Ltd., paid to Nederlandsche Handel Maatschappij, at Calcutta, India, the correspondent bank of said Wells Fargo Bank & Union Trust Co., a corporation, the full amount of the proceeds of each of said drafts, amounting to the sum of $119,850.75, which said sum is now in the course of transmittal by mail from said Nederlandsche Handel Maatschappij to said Wells Fargo Bank & Union Trust Co., a corporation.

XI.

That said Wells Fargo Bank & Union Trust Co., a corporation, without right in law or equity, now claims a lien on each of said drafts and the proceeds thereof, and further claims the right and threatens to apply said proceeds, when received from its said correspondent bank, towards the payment of the unsecured indebtedness owing it from said Richfield Oil Company of California, a corporation, evidenced by said promissory note dated July 12, 1930 in the sum of $625,000, plus accrued interest.

XII.

That said Wells Fargo Bank & Union Trust Co., a corporation, without right in law or equity further claims a lien on the following drafts and the proceeds thereof:

Draft drawn by Richfield Oil Company of California, a corporation, on Ricardo Velasques in the sum of $1,219 maturing April 15, 1931;

Draft drawn by Richfield Oil Company of California, a corporation, on Bueno & Co. in the sum of $2,441, of which $1,500 matured on January 10, 1931;

Draft drawn by Richfield Oil Company of California, a corporation, on Sociedad Automaviliania Colombiana in the sum of $779.10, which matured January 25, 1931, but which maturity date was extended by said Richfield Oil Company of California to February 13, 1931; [7]

Draft drawn by Richfield Oil Company of California, a corporation, on Ito Bergonzali in the sum of $53.45, maturing January 15, 1931.

That said Wells Fargo Bank & Union Trust Co., a corporation, has already applied towards the payment of said unsecured indebtedness owing to it from said Richfield Oil Company of California, a corporation, evidenced by said promissory note dated July 12, 1930, part of the proceeds of said last mentioned drafts, and threatens to so apply the remainder of said proceeds, when received by it from its correspondent bank or banks.

XIII.

That pursuant to said order of the District Court of the United States in and for the Southern District of California, Central Division, hereto annexed and marked Exhibit "A", appointing said William C. McDuffie receiver for said Richfield Oil Company of California, a corporation, and pursuant to said order of the District Court of the United States in and for the Northern District of California, Southern Division, hereto annexed and marked Exhibit "B", appointing said William C. McDuffie ancillary receiver for said Richfield Oil Company of California, a corporation, said receiver was authorized forthwith to take and have complete exclusive control, possession and custody of all the property and assets owned by or under the control of or in the possession of said Richfield Oil Com-

pany of California, a corporation, real, personal and mixed, of every kind, character and description, within the Ninth Judicial District, and all persons, firms and corporations were forthwith ordered to deliver to said receiver all of said property and assets of said Richfield Oil Company of California, a corporation.

That payment by said Wells Fargo Bank & Union Trust Co., a corporation, to said William C. McDuffie, as receiver for said Richfield Oil Company of California, a corporation, of the proceeds of all of said drafts is imperative and essential for the continued operations of the business of said Richfield Oil Company of California, a corporation, by said receiver pursuant to the orders of said Courts; that said receiver is the true owner of the proceeds of said drafts, and said Wells Fargo Bank & Union Trust Co., a corporation, has no right, title or interest in or to the same or any part thereof. [8]

WHEREFORE, said William C. McDuffie, ancillary receiver and complainant herein, prays for relief as follows:

1. That said Wells Fargo Bank & Union Trust Co., a corporation, be ordered and directed to forthwith deliver to William C. McDuffie, ancillary receiver, complainant herein, the proceeds of each of the two foreign drafts set forth in paragraph VII hereof immediately upon their receipt by said Wells Fargo Bank & Union Trust Co., a corporation, from said Nederlandsche Handel Maatschappij, without any right of offset or claim thereupon.

2. That said Wells Fargo Bank & Union Trust Co., a corporation, be ordered and directed to forthwith pay over to said William C. McDuffie, ancillary receiver, complainant herein, the proceeds of said foreign draft in the sum of $23,607.50, deposited with it for collection by said Richfield Oil Company of California, a corporation, drawn on Birla Brothers, Ltd., at Calcutta, India, and maturing on August 19, 1931, immediately upon its receipt by said Wells Fargo Bank & Union Trust Co., a corporation, from said Nederlandsche Handel Maatschappij, and the proceeds of all other foreign drafts deposited with it for collection by said Richfield Oil Company of California, a corporation, without any right of offset or claim thereupon.

3. That temporarily and during the pendency of this suit, an injunction be issued against said Wells Fargo Bank & Union Trust Co., a corporation, and all of its officers, agents and employees, and all other persons claiming or acting by, through or under it, or any or all of them, to restrain them from disposing of any of said drafts or the proceeds thereof, and that said complainant may have such other and further relief in the premises as the needs of the case may require and as may be agreeable to equity.

4. That this Honorable Court give to complainant herein, as receiver, such further directions and instructions relating to the possession of all of said drafts and the proceeds thereof as may by the Court be deemed just and equitable.

5. That a writ of subpoena be granted to said complainant to be directed to said defendant, Wells Fargo Bank & Union Trust Co., a corporation, in this proceeding, requiring said defendant to be and appear before this [9] Honorable Court within the time required by law and the practice of this Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and, further, to perform and abide by such further order, direction and decree thereof as to this court shall seem meet.

GREGORY, HUNT & MELVIN,
Solicitors for Complainant,
William C. McDuffie, as ancillary receiver of Richfield Oil Company of California, a corporation.
[10]

State of California,
City and County of San Francisco.—ss.

Ward Sullivan, being first duly sworn, deposes and says:

That he is a member of the firm of Gregory, Hunt & Melvin, the solicitors for William C. McDuffie, ancillary receiver and complainant herein; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief and as to those matters he believes it to be true; that affiant makes this verification on behalf of said William C. McDuffie, ancillary receiver and complainant herein, for the reason that said William C. McDuffie is absent from

the City and County of San Francisco, where affiant has his offices.

WARD SULLIVAN.

Subscribed and sworn to before me this 23rd day of May, 1931.

[Seal] HALLIE L. LANFAR,

Notary Public in and for the City and County of San Francisco, State of California. [11]

EXHIBIT "A"

ORDER APPOINTING RECEIVER

This case came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, the Court being fully advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. William C. McDuffie is hereby appointed receiver of all the property, assets and business owned by or under the control or in the possession of the defendant, Richfield Oil Company of California, real, personal and mixed, of whatsoever kind and description, within the jurisdiction of this court, including all lands, buildings, plants, warehouses, pipe lines, refineries, tanks, ships, shipping facilities, wharves, docks and dockage facilities, and appurtenances, owned, controlled, leased or operated by said defendant, and all raw

materials, materials in process of manufacture, finished materials, inventory, stock in trade, equipment, tools, machinery, furniture, supplies, merchandise and books of account, records, and other books, papers and accounts, cash on hand, in bank, or on deposit, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, bills and accounts receivable, and all rents, issues and profits and income accruing and to accrue from said assets, property and business, with authority to take possession of said assets and property and to continue said business as a going concern.

2. The defendant, its officers and employees, and any persons acting under its direction, shall deliver to the receiver any and all of the aforesaid properties, real, personal or mixed, in their possession or under their control.

3. All creditors, stockholders, and all persons claiming or acting by, through or under them, and all sheriffs and marshals and other officers, agents, attorneys, proctors, representatives, servants and employees, and all other persons, associations and corporations are hereby enjoined and restrained from instituting or prosecuting any action at law, or suit, or proceeding in equity or admiralty against the defendant, in any court of law or equity or admiralty, or before any association, organization or arbitration board, or arbitration by referee or umpire, or other court or tribunal, or otherwise, or from executing or issuing, or causing the execution or issuance, or the issuing out of any court of any

writ, process, summons, attachment, subpoena, replevin or other proceeding for the purpose of impounding or taking possession of or interfering with any of the aforesaid property owned by or in the possession or under the control of said defendant, or of the receiver, or owned by the defendant and in the possession of any of its officers, agents or employees, and all sheriffs, marshals and other officers and their deputies, representatives and servants, and all other persons, associations and corporations are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer or dispose of, or in any way to interfere with any of the property, assets or effects in the possession of the defendant or of the receiver, and from doing any act or thing whatsoever to interfere with the possession and management by the receiver of the property and assets, or the business of the defendant, or in any way to interfere with the receiver in the discharge of any of his duties, or to interfere in any manner with the administration and disposition in this suit of the property and affairs of the defendant.

4. Said receiver is hereby authorized forwith to take and have complete exclusive control, possession and custody of all of the property and assets owned by or under the control of or in the possession of the defendant, real, personal and mixed of every kind, character and description within the Ninth Judicial Circuit, and all persons, firms and corporations, including the defendant, its officers,

agents and employees, shall forthwith deliver to the receiver all property and assets of the defendant, or in its possession, or under its control, and the defendant, its officers, agents and employees are hereby directed upon the request of the receiver to endorse, transfer, set over and deliver to the receiver any and all shares or certificates of stock, notes, bills of exchange or other documents, or muniments of title outstanding in the name of or in the possession or under the control of the defendant, or as to which the defendant has any interest, and to execute and deliver powers of attorney and proxies authorizing the receiver to vote on such shares of stock or certificates, and the receiver is hereby authorized to vote in person or by proxy any and all shares of stock standing in the name of the defendant.

5. The receiver is hereby authorized until the further order of this court to continue, manage and operate the busienss of the defendant, with full power and authority to carry on, manage and operate the business and properties of the defendant, and to buy and sell merchandise and supplies for cash or on credit as may be deemed advisable by said receiver, and to the extent that the receiver may determine that it is for the best interests of the receivership estate so to do, to perform and fulfill the contracts and obligations of the defendant, and to enter into new contracts incidental to the operation of its business, and to appoint and employ such managers, agents, employees, servants,

accountants, attorneys and counsel as may in the judgment of the receiver be advisable or necessary in the management, conduct, control or custody of the receivership estate, and the receiver is hereby authorized to make such payments and disbursements out of the property and assets of the defendant in his possession as may be needful or proper for the preservation and operation of the properties and business of the defendant, to issue such receivers' certificates for the purpose of meeting the obligations of said defendant as may be authorized from time to time by this court.

6. The receiver is hereby authorized to receive and collect rents, income and profits of any of the properties of the defendant, whether the same are now due or shall hereafter become due and payable, and to do such things, enter into such agreements, and employ such agents in connection with the management, care, preservation and operation of the properties of the defendant as the receiver may deem advisable, and to incur such expenses and make such disbursements as may in the judgment of the receiver be [12] necessary or advisable, including all bills and accrued charges for electric light and power, gas, water, insurance, freight and carriage charges on goods in transit, telephone charges, taxes and charges of the nature thereof, lawfully incurred or imposed upon the property prior to the receivership, and all claims for accrued wages, salaries and expenses of officers, agents and employees for services rendered prior to the date

of this order but remaining unpaid at the date hereof, to the end that the operation of the business of the defendant may not be interfered with or interrupted.

7. The receiver is hereby authorized and empowered to institute, prosecute and defend, compromise, adjust, intervene in or become a party to such suits, actions, proceedings at law, in equity or in admiralty, including ancillary proceedings in State or Federal Courts as may in the judgment of the receiver be necessary or proper for the protection, maintenance and preservation of the property and assets of the defendant and the conduct of its business, or the carrying out of the terms and provisions of this order, and likewise to defend, compromise and adjust, or otherwise dispose of, any and all suits, actions and proceedings instituted against him as receiver or against the defendant, and also to appear in and conduct the prosecution or defense of any action, suit or proceeding or to adjust or compromise any action, suit or proceeding now pending in any court by or against the defendant where such prosecution, defense or other disposition of such action, suit or proceeding will in the judgment of the receiver be advisable or proper for the protection of the property and assets of the defendant, and in his discretion to compound and settle with all debtors of the defendant, with persons having possession of its property or in any way responsible at law or in equity to the defendant upon such terms and in such manner as

the receiver shall deem just and beneficial to the defendant and its creditors.

8. The receiver is hereby given a period of six (6) months from the date hereof within which to arrive at a determination as to what contracts including leases of the defendant the receiver should affirm or disaffirm and within that time to make his election in that respect; the Court reserves the right if so advised from time to time to extend or diminish the time so granted to the receiver within which to make such election.

9. The receiver shall retain possession and continue to discharge the powers and duties aforesaid until the further order of this Court in the premises; but shall from time to time apply to this Court for such other and further orders and directions as he may deem necessary or advisable for the due administration of the receivership; and the receiver is hereby vested, in addition to the powers aforesaid, with all the general powers of receivers in cases of this kind, subject to the direction of this Court, and the receiver shall from time to time or when directed by the Court render to the Court reports of his proceedings and accountings with respect to all moneys received and disbursed by him or his agents.

10. The bond of the receiver in the sum of Three Million Five Hundred Thousand Dollars, conditioned that he will well and truly perform the duties of his office and duly account for all moneys and property which may come into his hands and abide and perform all things which he shall be di-

rected to do by this Court, with sufficient sureties to be approved by a Judge of this Court, shall be forthwith filed in the office of the Clerk of this Court.

11. A copy of this order shall, within ten (10) days from the date hereof, be published in two issues of the Los Angeles Daily Journal, a newspaper of general circulation, printed and published in the City of Los Angeles, State of California.

Dated: January 15, 1931.

WM. P. JAMES,
United States District Judge.

Filed Jan. 15, 1931. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk. [13]

EXHIBIT "B"

This cause came on to be heard at this term on motion of the Plaintiff for the appointment of an Ancillary Receiver of the property owned by or under the control of or in the possession of Defendant and located within the jurisdiction of this Court, and upon reading the verified bill of complaint and verified answer in this cause, the bill of complaint and answer filed by the Plaintiff and Defendant in the District Court of the United States for the Southern District of California, Central Division, and the order of the District Court of the United States for the Southern District of California, Central Division, thereunder, made January 15, 1931, appointing William C. McDuffie

receiver, and after hearing counsel and it appearing that said William C. McDuffie was appointed receiver upon the bill filed in and upon the order of said Court, of the properties belonging to, or under the control of, or in the possession of defendant, Richfield Oil Company of California, located within the jurisdiction of said Court, and that said Receiver has filed therein the bond required by said original order.

It is ORDERED, ADJUDGED AND DECREED that this Court take ancillary jurisdiction and that William C. McDuffie be, and he is hereby, appointed Ancillary Receiver of the Richfield Oil Company of California, a Delaware corporation, the defendant above named, in and for the United States Judicial District of the Northern District of California, Southern Division, with all rights, powers, privileges and authorities conferred upon him by the order of the District Court of the United States, for the Southern District of California, Central Division, appointing the said William C. McDuffie as Receiver, dated the 15th day of January, 1931, or by any subsequent order of said District Court of the United [14] States, for the Southern District of California, Central Division, whether heretofore or hereafter made, and that said William C. McDuffie is hereby authorized to perform any and all acts and take any and all steps in the jurisdiction of this Court which the said Receiver has been or may be hereafter authorized to take as Receiver in the jurisdiction of the District

Court of the United States, for the Southern District of California, Central Division.

It is further ORDERED, ADJUDGED AND DECREED that the said William C. McDuffie is authorized to act as Receiver herein without taking any further oath of office or executing any further bond.

It is further ORDERED, ADJUDGED AND DECREED that the defendant, its agents and employees, and all other persons, including creditors of the defendant, are hereby requested and commanded forthwith to deliver all property of every nature belonging to the defendant, or under its control, or in its possession, to the said Ancillary Receiver.

And it is further ORDERED, ADJUDGED AND DECREED that the said defendant and each and every of its agents and employees, and all creditors of the defendant, and all marshals, sheriffs, constables, and all deputies and servants, and all other officers, and, generally, all persons, firms and corporations whatsoever, are hereby enjoined from removing, transferring, disposing of, or attempting to remove, transfer or dispose of, or in any way interfere with any of the properties of the defendant, or from doing anything whatsoever of any nature to interfere with the possession and control of the said ancillary receiver of the property of said defendant.

And it is further ORDERED, ADJUDGED AND DECREED that all creditors, stockholders

and all persons claiming or acting by, through or under them, and all sheriffs and marshals and other officers, agents, attorneys, proctors, representatives, servants and employees, and all other persons, associations and corporations, are hereby enjoined and restrained from instituting or prosecuting any action at law or suit or proceeding in equity or admiralty against the said defendant in any court of law or equity or admiralty, or before any association, organization or arbitration board, or arbitration by referee or umpire or other court or tribunal, or otherwise, or from executing or issuing, or causing the execution or issuance, or the issuing out of any court of any writ, process [15] summons, attachment, subpoena, replevin or other proceeding, for the purpose of impounding or taking possession of or interfering with any property owned by or under the control of or in the possession of said defendant or of said Receiver; and all sheriffs, marshals and other officers and their deputies, representatives and servants, and all other persons, associations and corporations, are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer, dispose of or in any way to interfere with any property, assets or effects in the possession of the defendant or of the Receiver, or owned by the defendant or under its control or in its possession or in the possession or control of any of its officers, agents or employees, and from doing any act or thing whatsoever to interfere with the possession

and management by the Receiver of the property and assets of the defendant, or in any way to interfere with the Receiver in the discharge of his duties, or in carrying on the business of said defendant, or to interfere in any manner with the administration and disposition in this suit of the property and affairs of the defendant.

It is further ORDERED, ADJUDGED AND DECREED that the said Ancillary Receiver shall have leave to apply to this Court for further orders and authority at any time hereafter as may be deemed by this Court proper and shall comply with all orders of the court of original jurisdiction.

It is further ORDERED, ADJUDGED AND DECREED that the said William C. McDuffie file in this court certified copies of all orders affecting the property of said defendant within this district made by the District Court of the United States, for the Southern District of California, Central Division, in said original cause for the information of the Court and all others interested.

Dated: January 15th, 1931.

FRANK H. KERRIGAN,
United States District Judge.

[Endorsed]: Filed May 23, 1931. [16]

[Title of Court and Cause.]

ANSWER AND DEFENSES OF DEFENDANT WELLS FARGO BANK & UNION TRUST CO. TO ANCILLARY BILL OF COMPLAINT.

Comes now Wells Fargo Bank & Union Trust Co. defendant named in the ancillary bill of complaint of William C. McDuffie as ancillary receiver of Richfield Oil Company of California, a corporation, and answering said ancillary bill of complaint admits, denies and avers as follows, to-wit:

I.

Admits the allegations set forth in Paragraphs I, II and III, of said ancillary bill of complaint. [17]

II.

Admits the taking and existence of the proceedings for the appointment of William C. McDuffie as Receiver of the property and assets of Richfield Oil Company of California as a corporation set forth in Paragraph IV of said ancillary bill of complaint, but denies the jurisdiction of the Court to make the appointment of said Receiver and denies that said William C. McDuffie ever since the 15th day of January, 1931, or from any time subsequent or prior thereto has been and/or now is the duly or otherwise properly appointed and/or qualified and/or acting Receiver for said Richfield Oil Company of California, a corporation, or of the assets or property thereof.

III.

Admits the taking and existence of the proceedings for the appointment of William C. McDuffie as Receiver of the property and assets of Richfield Oil Company of California, a corporation as set forth in Paragraph V of said ancillary bill of complaint, but denies that since the 20th day of January, 1931, or any time subsequent or prior thereto, said William C. McDuffie has been and/or now is the duly or otherwise properly appointed and/or qualified and/or acting ancillary receiver of or for said Richfield Oil Company of California, a corporation, within said Northern District of California, or elsewhere, or of the assets or property thereof.

IV.

Admits the allegations set forth in Paragraph VI of said ancillary bill of complaint with respect to the borrowing by said defendant Richfield Oil Company of California, a corporation, from said defendant Wells Fargo Bank & Union Trust Co., of the sum of $625,000, and admits that no agreement for collateral or [18] security for the repayment of said amount was executed at said time by said Richfield Oil Company of California, a corporation, to or for the benefit of said Wells Fargo Bank & Union Trust Co., a corporation. but avers in this respect that subsequently, to-wit, in the months of October, November and December of 1930 and January of 1931, certain collateral security was deposited with said Wells Fargo Bank & Union Trust

Co. as more particularly hereinafter set forth, as security for certain indebtedness of said Richfield Oil Company of California, a corporation, including said indebtedness of $625,000 in said Paragraph VI of said ancillary bill of complaint referred to.

V.

Answering the allegations of Paragraph VII of said ancillary bill of complaint, said defendant denies that said agreement was as set forth in said Paragraph VII, and specifically denies that said agreement for the deposit of certain foreign drafts by Richfield Oil Company of California with said defendant, was only for the purpose of collection and/or was separate and/or distinct from any other financial transaction or transactions between said parties and denies that said foreign drafts were deposited only for collection and denies that each of said drafts No. 103005 and No. 103006-B were duly accepted for payment by the drawees thereof and admits that the same became due and payable on May 14, 1931, and admits that the draft last referred to in said Paragraph VII, in the sum of $23,607.50, matures for payment on August 19, 1931.

With respect to the agreement under which said drafts were deposited defendant avers that the only agreement between said Wells Fargo Bank & Union Trust Co. and said Richfield Oil Company of California, a corporation, with respect to the deposit [19] of said drafts and the collection and disposition of the proceeds thereof, was as set forth in two certain written contracts each designated "Ac-

ceptance Agreement", duly executed by said Richfield Oil Company of California, a corporation, and addressed to Wells Fargo Bank & Union Trust Co. prior to the receipt or acceptance of said drafts, said Acceptance Agreements being dated respectively October 4th and November 28th, 1930, and being for the establishment of credits in favor of Richfield Oil Company of California, a corporation, in the amounts respectively of $150,000 and $5000; that true copies of said Acceptance Agreements, being the sole contract between said Richfield Oil Company of California, a corporation and said Wells Fargo Bank & Union Trust Co. with respect to the deposit of said drafts, and the collection thereof and the disposition of the proceeds thereof, are hereto attached and expressly made a part hereof, said Acceptance Agreement dated October 4, 1930 being designated and marked Exhibit "A" and said Acceptance Agreement dated November 28, 1930, being designated and marked Exhibit "B".

VI.

Defendant admits that in the months of October and November, 1930, said Richfield Oil Company of California, a corporation, borrowed from said Wells Fargo Bank & Union Trust Co. the sum of approximately $155,000, repayment of which was secured by certain foreign drafts and the proceeds thereof, then or thereafter deposited with said Wells Fargo Bank & Union Trust Co. by said Richfield Oil Company of California, a corporation, and in

this respect defendant avers that $150,000 of said sum was borrowed pursuant to Acceptance Agreement Exhibit "A" and $5000 was borrowed pursuant to Acceptance Agreement Exhibit "B" and that the drafts deposited by said Richfield Oil Company of [20] California, a corporation, with said Wells Fargo Bank & Union Trust Co. were to be held and collected and the proceeds thereof held and disposed of, pursuant to the terms, conditions and covenants of said Acceptance Agreements and, as therein set forth, as security for the amount borrowed under said Acceptance Agreements and likewise as security for any other liability of said Richfield Oil Company of California, a corporation, to said Wells Fargo Bank & Union Trust Co., whether existing at the time of the execution of said Agreements respectively or at the time of the deposit of said drafts respectively, or thereafter contracted or owing.

Defendant denies that at the time said sums aggregating approximately $155,000 or any part thereof were advanced by said Wells Fargo Bank & Union Trust Co., or at any time, it was again, or at all, then or there, or at any time, agreed by said Wells Fargo Bank & Union Trust Co. with said Richfield Oil Company of California, or with any person or party in behalf of said Richfield Oil Company of California, that said loans or any thereof were and/or would be considered by said Wells Fargo Bank & Union Trust Co. and/or by said Richfield Oil Company of California as entirely or

at all distinct and/or separate and/or apart from any and/or other financial or other transaction or transactions between said parties.

Defendant admits that said sum aggregating approximately $155,000 borrowed from said Wells Fargo Bank & Union Trust Co. by said Richfield Oil Company of California, pursuant to said Acceptance Agreements, was repaid, but denies that said defendant Wells Fargo Bank & Union Trust Co. now has no claim upon or to any of said drafts deposited pursuant to said Acceptance Agreements, or to the proceeds, or any thereof, of said drafts [21] and in this respect defendant avers that pursuant to the express terms of said Agreements Exhibits "A" and "B" and likewise pursuant to the provisions of the laws of the State of California with respect to a banker's lien, defendant has a lien and claim upon said drafts and all thereof and/or the proceeds collected upon said drafts and to be hereafter collected upon said drafts, as security for any and all unpaid indebtedness from said Richfield Oil Company of California, a corporation, to said Wells Fargo Bank & Union Trust Co.

VII.

With respect to the allegations set forth in Paragraph IX of said ancillary bill of complaint, defendant admits that defendant, Wells Fargo Bank & Union Trust Co., filed, on or about the 28th day of March, 1931, its Proof of Claim with said William C. McDuffie as Receiver for said Richfield Oil

Company of California, a corporation, averring in this respect, however, that said claim was filed without consenting to the jurisdiction of said William C. McDuffie as said purported receiver for said Richfield Oil Company of California, a corporation, and without waiving the rights of said Wells Fargo Bank & Union Trust Co. to attack the jurisdiction of said Receiver to require the filing of claims or to act upon or decide the same, or to liquidate or continue the business of said Richfield Oil Company of California, a corporation, or to retain and dispose of the assets and properties thereof.

Defendant admits that said claim embodied the language purportedly quoted therefrom in Paragraph IX of said ancillary bill of complaint and further admits that no note or other evidence of indebtedness, other than a copy of said note dated July 12, 1931, in the principal sum of $625,000, was attached to said Proof [22] of Claim. Further in this respect said defendant avers that at the time of the preparation of said Claim the information therefor was compiled and delivered to said defendant by its Note Department; that said Note Department was then and now is a separate Department of said Wells Fargo Bank & Union Trust Co.; that the Foreign Department of said Wells Fargo Bank & Union Trust Co. was likewise then and now is a separate Department of said Wells Fargo Bank & Union Trust Co.; that said Note Department, at the time of filing said Claim, kept and still does

keep, records of loans from and indebtedness to said Wells Fargo Bank & Union Trust Co. evidenced by promissory notes, and had not at that time and has now, no records in its Department of collateral or other security deposited with said Foreign Department or with any of the other separate Departments of said Wells Fargo Bank & Union Trust Co.; that therefore, through inadvertence and lack of knowledge, by said Note Department, said claim stated that there were no offsets or counterclaims to the indebtedness set forth in said claim, and no claim to preference in payment and further stated that no securities were held by said Wells Fargo Bank & Union Trust Co. for said indebtedness, whereas at said time the truth and the facts were and now are, that there were and now are certain collateral securities in the possession of Wells Fargo Bank & Union Trust Co., and particularly of its said Foreign Department, as security for all of the said indebtedness of said Richfield Oil Company of California, a corporation, to said Wells Fargo Bank & Union Trust Co., being more particularly, the drafts and/or proceeds thereof, referred to in said ancillary bill of complaint and more specifically hereinafter referred to.

That prior to the filing of said Claim, to-wit: on or about the 16th day of January, 1931, in response to a [23] telegraphic request from said William C. McDuffie to said Wells Fargo Bank & Union Trust Co. requesting the restoration of said cash balances

upon which said Wells Fargo Bank & Union Trust Co. had prior thereto exercised its banker's lien, said Wells Fargo Bank & Union Trust Co. duly informed said Receiver by telegram and otherwise that it would restore and did restore to said William C. McDuffie as Receiver, the balance in the checking account at Wells Fargo Bank & Union Trust Co. of said Richfield Oil Company of California, expressly stating, however, that said Wells Fargo Bank & Union Trust Co. was holding certain collections, to-wit: said drafts, as security for acceptances and advising said Receiver that said Wells Fargo Bank & Union Trust Co. continued to reserve all of its rights under said agreements, and/or its banker's lien against said collections as security for all indebtedness of said Richfield Oil Company of California to said Wells Fargo Bank & Union Trust Co. Said information was transmitted to said Receiver on or about the 16th day of January, 1931, and at all times subsequent thereto said Wells Fargo Bank & Union Trust Co. has maintained and so advised said Receiver, that it claimed said drafts and/or the proceeds thereof, as security for the indebtedness of said Richfield Oil Company of California, to it, except only that at the request of said Receiver said Wells Fargo Bank & Union Trust Co. subsequently remitted the sum of $1956.52 on account of partial collection received upon a certain draft known as the Bueno & Co. draft hereinafter more specifically referred to.

Upon the discovery of the inadvertence of its Note Department with respect to the preparation of said claim hereinbefore referred to, said Wells Fargo Bank & Union Trust Co. forthwith, to-wit: on or about the 19th day of May, 1931, prepared a [24] written amendment to claim, a true copy of which Amendment to Claim is attached hereto and marked Exhibit "C" and by reference made a part hereof; there was attached to and made a part of said Amendment to Claim as Exhibits "A", "B" and "C" thereof respectively, a true copy of the Proof of Claim of Wells Fargo Bank & Union Trust Co. hereinbefore referred to and true copies of said Acceptance Agreements Exhibits "A" and "B" to this Answer; said Amendment to Claim, including said exhibits thereto, was duly presented to said William C. McDuffie, as Receiver of said Richfield Oil Company of California, on May 20, 1931, but said William C. McDuffie refused to accept the same. Thereupon, forthwith, said Wells Fargo Bank & Union Trust Co. prepared and filed in the District Court of the United States in and for the Southern District of California, Central Division, in the proceedings in which said receivership of said Richfield Oil Company of California was pending, its verified Petition for an order to show cause why the Receiver should not be compelled to receive said Amendment to Claim. Subsequently, after negotiations between the Attorneys for said Wells Fargo Bank & Union Trust Co. and the Attorneys for said Receiver, it was stipulated that

said Amendment to Claim, including the exhibits thereto, should be filed, without prejudice to the Receiver's right to subsequently reject the same, or to make any objections to its contents, and the time and manner of filing thereof, and thereafter, on to-wit: the 29th day of May, 1931, it was duly and regularly ordered by the Honorable William P. James, United States District Judge for the United States District Court, Southern District of California, Central Division, in the proceedings there pending, that said Wells Fargo Bank & Union Trust Co. be authorized to file its Amendment to Proof of Claim, including the exhibits thereto, and that said William C. McDuffie as Receiver [25] be instructed to receive and accept the same for filing. A true copy of said order is attached hereto, marked Exhibit "D" and by express reference made a part hereof.

VIII.

With respect to the allegations set forth in Paragraph X of said ancillary bill of complaint said defendant admits that said drafts dated October 8, 1930, and referred to more specifically in Paragraph VII of said ancillary bill of complaint, became due and payable by the drawee thereof on the 14th day of May, 1931, and admits that said drafts were at said time by the drawee thereof paid to Nederlandsche Handel Maatschappij, at Calcutta, India, but in this respect avers that payment thereof to defendant Wells Fargo Bank & Union Trust Co. was not made until the 10th day of June, 1931, at

which time the net proceeds of said drafts, to-wit: the sum of $119,512.54, were received in San Francisco, California, by defendant Wells Fargo Bank & Union Trust Co. and applied against the outstanding indebtedness of said Richfield Oil Company of California to it.

IX.

Answering the allegations of Paragraph XI of said ancillary bill of complaint said defendant admits that it claims a lien upon each of said drafts referred to in Paragraph VII of said ancillary bill of complaint but denies that said claim is without right in law or in equity and admits that it claims a lien upon said drafts and the proceeds thereof and the right to apply the proceeds thereof as and when received by it from its correspondent bank, toward the payment of the unsecured indebtedness owing to it from said Richfield Oil Company of California, as evidenced by said promissory note dated July 12, 1930, in the sum of $625,000, plus accruing interest, and in this respect said defendant avers that said drafts and each of them, and the [26] proceeds thereof, were received by it pursuant to said Acceptance Agreements Exhibits "A" and "B", and under the provisions of the laws of the State of California with reference to banker's liens, as security not alone for the sum of $155,000 advanced pursuant to said Acceptance Agreements, but as security for any and all indebtedness of said

Richfield Oil Company of California to said defendant bank, whether existing at the time of the deposit of said drafts or the execution of said Agreements or at any time thereafter existing.

X.

Answering the allegations of Paragraph XII of said ancillary bill of complaint said defendant admits that it claims a lien upon the drafts set forth in said Paragraph XII and the proceeds thereof, but denies that said claim to a lien is without right in law or in equity and in this respect defendant avers as follows:

With respect to the second draft referred to in said Paragraph XII of said ancillary bill of complaint, to-wit: the draft drawn by Richfield Oil Company of California, a corporation, on Bueno & Co., in the sum of $2,441.00, defendant avers that at the request of William C. McDuffie as Receiver of Richfield Oil Company of California, a corporation, it transmitted to him the sum of $1956.54 on account of the proceeds of said draft received by it, with the express understanding and agreement however, that the transmittal of said proceeds was for the convenience of said William C. McDuffie and without waiver of any of the rights of said defendant Wells Fargo Bank & Union Trust Co., pursuant to said Acceptance Agreements and/or under its banker's lien, with respect to the balance of said draft, or of any other of said drafts, or the proceeds thereof.

Further answering the allegations of Paragraph XII of said ancillary bill of complaint, said defendant admits that it has already applied toward the payment of said indebtedness [27] owing it from said Richfield Oil Company of California, evidenced by said promissory note dated July 12, 1930, denying however, that said indebtedness was unsecured, part of the proceeds of said last mentioned drafts and intends, unless precluded by the order of this Court, to apply the remainder of the proceeds of said drafts as and when received by it upon the collection thereof, to the payment of said indebtedness. In this respect defendant avers that it has received and applied the proceeds of said drafts and of the drafts mentioned in Paragraph VII of said ancillary bill of complaint, pursuant to the terms, conditions and covenants of said Acceptance Agreements Exhibits "A" and "B", and pursuant to its banker's lien, in the following amounts and as follows:

Drawee	Amount	Date Paid	Amount Received
Bueno & Co.	$2441.00	May 11, 1391 (Bal)	$ 469.06
Ricardo Velasques	1219.00	May 19, 1931	1245.11
Birla Bros. (Drafts Nos. 103005 and 103006-B)	119,850.75	June 10, 1931	119,512.54
Total amount received and credited against said indebtedness of Richfield Oil Co. of California hereinbefore referred to			$121,226.71

XI.

Answering the allegations of Paragraph XIII of said ancillary bill of complaint, said defendant denies that said Receiver was at any time authorized forthwith or at any time to take and/or have complete, exclusive or any control or possession or custody of all or any of the property and/or assets owned by or under the control of or in the possession of said Richfield Oil Company of California, a corporation, real, personal or mixed, or of any kind or character or description, within the Ninth Judicial District or elsewhere, and denies that all persons and/or firms and/or corporations were ever validly or properly, or with [28] due or any proper authorization, forthwith or at any time, ordered to deliver to said Receiver all or any of the property or assets of said Richfield Oil Company of California, a corporation, and in that respect defendant expressly avers that said District Court in and for the Southern District of California, Central Division, was without jurisdiction or authority to make said order marked Exhibit "A" to complainant's ancillary bill of complaint, or any valid or proper order appointing said William C. McDuffie or any other person Receiver for said Richfield Oil Company of California, a corporation, and denies that said District Court of the United States in and for the Northern District of California, Southern Division, had jurisdiction or authority to make said order marked Exhibit "B" to complainant's ancillary bill of complaint, or any valid or proper order appointing

said William C. McDuffie or any other person ancillary receiver for said Richfield Oil Company of California, a corporation.

Further answering the allegations of Paragraph XIII of said ancillary bill of complaint, defendant denies that the payment by said defendant Wells Fargo Bank & Union Trust Co. to said William C. McDuffie as Receiver for said Richfield Oil Company of California, a corporation, or otherwise, of the proceeds or any thereof, of all or any of said drafts, is imperative or essential for the continued or other operations of the business of said Richfield Oil Company of California by said Receiver pursuant to the order or orders of said Court or Courts, or pursuant to any order or any authority, and in this respect defendant further avers that said Receiver has no authority or jurisdiction to continue the business of said corporation.

Defendant denies that the Receiver is the true owner or the owner, or has any claim to the proceeds of said drafts or any thereof or to said drafts and denies that said Wells Fargo Bank [29] & Union Trust Co. has no right or title or interest in or to the same or any thereof or any part thereof and in this respect defendant expressly avers that upon the deposit of said drafts by it pursuant to said two Acceptance Agreements Exhibits "A" and "B" said Wells Fargo Bank & Union Trust Co. held said drafts and each thereof and the proceeds thereof, as security for any and all indebtedness of said Richfield Oil Company of California, a cor-

poration, to it, including said indebtedness evidenced by said promissory note dated July 12, 1930 in the amount of $625,000 with accruing interest thereon, and that irrespective of said Agreements Exhibits "A" and "B", said defendant held said drafts and/or the proceeds thereof at all times subsequent to the maturity of said indebtedness of said Richfield Oil Company of California, a corporation, to said Wells Fargo Bank & Union Trust Co., to-wit: the 10th day of September, 1930, pursuant to the banker's lien of said defendant as created by the laws and statutes of the State of California with the right to apply said drafts and/or the proceeds thereof against said matured indebtedness and that upon the collection of said drafts said defendant, Wells Fargo Bank & Union Trust Co., had and has the right, pursuant to said Agreements and pursuant to its said banker's lien, to apply the proceeds thereof on account of the matured and unpaid indebtedness of said Richfield Oil Company of California, a corporation, to it.

And for a FURTHER, SEPARATE AND SECOND DEFENSE to said ancillary bill of complaint, said defendant Wells Fargo Bank & Union Trust Co., admits, denies and avers as follows, to-wit:

I.

Said defendant avers that the above entitled Court is without jurisdiction to determine the ques-

tion herein presented [30] as to the ownership of the drafts referred to in said bill of complaint and/or the proceeds thereof.

II.

Said defendant avers that the Order of the District Court of the United States for the Southern District of California, Central Division, purportedly appointing said William C. McDuffie as Receiver of said Richfield Oil Company of California, a corporation, and/or of the assets and properties thereof, was improper and unauthorized and made without proper jurisdiction of said Court in said proceedings and furthermore, that the Order of the District Court of the United States for the Northern District of California, Southern Division, purportedly appointing said William C. McDuffie as ancillary Receiver of said Richfield Oil Company of California, a corporation, and/or of the assets and properties thereof, was improper and unauthorized and made without proper jurisdiction of said Court in said proceedings.

III.

Said defendant avers further that said Receiver has no right or authority, nor any jurisdiction to liquidate the affairs of said Richfield Oil Company of California, a corporation, or to continue the business of said corporation, nor has said Receiver any right or authority to fix the time for the presentation of claims against said Richfield Oil Company of California, a corporation, or to pass upon the validity of said claims, or to pay the same, or

to preclude the filing of said claims or of amendments to claims, and specifically that said Receiver had and has no jurisdiction to require said Wells Fargo Bank & Union Trust Co. to file its said claim in said receivership proceedings, or to deny to said Wells Fargo Bank & Union Trust Co. the right to file an amendment to said claim or to deny to said Wells Fargo Bank & [31] Union Trust Co. its right to claim said drafts and/or the proceeds thereof as security for said indebtedness of said Richfield Oil Company of California, a corporation, to defendant Wells Fargo Bank & Union Trust Co. on account of the alleged delay in presenting the claim thereto or on account of the alleged waiver by the filing of said defendant's claim against said Richfield Oil Company of California, a corporation, or for any reason.

In this respect defendant further avers that any order of the above entitled Court or of the United States District Court for the Northern District of California, Southern Division, purporting to give to said Receiver, or to said ancillary Receiver, the right to fix a time for the presentation of claims, and/or the right to pass upon and/or reject said claims, and/or to determine the validity or invalidity thereof and/or to determine what security if any said defendant or other claimants may or might have as securing the indebtedness of said Richfield Oil Company of California, a corporation, to it or them, was and is without jurisdiction and made and given in excess of and without the jurisdiction of said Courts or either thereof.

WHEREFORE, said defendant, Wells Fargo Bank & Union Trust Co., prays:

I.

That complainant take nothing by his said ancillary bill of complaint.

II.

That the relief sought by complainant in his said ancillary bill of complaint be denied.

III.

That said Wells Fargo Bank & Union Trust Co. be authorized and permitted to retain said drafts and/or the proceeds [32] thereof and to apply the same against the indebtedness of said Richfield Oil Company of California, a corporation, to it, or that said complainant be found to be without any right, title or interest in or claim to said drafts and/or the proceeds thereof, and that said Wells Fargo Bank & Union Trust Co. be found to be the owner of said drafts and/or the proceeds thereof, for the purpose of securing the indebtedness of said Richfield Oil Company of California, a corporation, to it, and for the purpose of applying the proceeds of said drafts, as and when received by it, against the unpaid and matured indebtedness of said Richfield Oil Company of California, a corporation, to it.

IV.

That said defendant Wells Fargo Bank & Union Trust Co. recover from said complainant its costs of suit herein incurred.

V.

That defendant Wells Fargo Bank & Union Trust Co. have such other and further relief as to this court shall seem meet.

HELLER, EHRMAN, WHITE AND McAULIFFE,

Solicitors for Defendant, Wells Fargo Bank & Union Trust Co. [33]

State of California,
City and County of San Francisco—ss.

Julian Eisenbach being duly sworn, desposes and says: That he is an officer, to-wit: Vice-President of Wells Fargo Bank & Union Trust Co., a corporation, and as such is authorized to and does make this verification for and on behalf of said corporation; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on information or belief and as to those matters he believes the same to be true

JULIAN EISENBACH.

Subscribed and sworn to before me this 24th day of July, 1931.

(Seal) JENNIE DAGGETT,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires Feb. 29, 1932. [34]

EXHIBIT "A"

ACCEPTANCE AGREEMENT

(Arising out of importation or exportation of goods)

To WELLS FARGO BANK & UNION TRUST CO., SAN FRANCISCO.

Dear Sirs:

We hand you herewith, for acceptance, the following drafts:

Number	Date	Covering following		Amount
	Oct. 6	Merchandise		$150,000
	Marks	Numbers	Description	

Payable in San Francisco to the order of Ourselves

It is agreed that the proceeds of the above will be used for financing the actual goods under consideration, and the proceeds of the sale of the goods shall be applied to liquidate the acceptance.

In consideration of your acceptance of the said draft or drafts the undersigned, jointly and severally, agree to pay you at the time of the acceptance a commission of ..... per cent, and further agree to pay you the amount of the said draft or drafts at your office one day before maturity. We waive all liability on your part in case the goods are not according to contract, either in description, quality, or quantity, or in any other

respect. All bills of lading, warehouse receipts and other documents of title and all money and goods held by you as security for any such acceptance shall also be held by you as security for any other liability from us to you whether then existing or thereafter contracted and bind ourselves to furnish you prior to ..... with shipping documents covering this merchandise or with exchange arising out of the transaction being financed by the credit.

We further agree to give and furnish you on demand additional security or to make payment on account in amounts and character satisfactory to you. If we fail to comply with any such demand or in case of our insolvency, assignment, bankruptcy, or failure in business, all our obligations and liabilities direct or indirect to you whether arising hereunder or otherwise shall forthwith become due and payable without demand or notice. All goods represented by bills of lading, warehouse receipts or other documents of title, pledged with you as security for your acceptances hereunder, shall be at all times covered by us by certificates of insurance under open policies to your order or by specific policies payable to you as your interest may appear, to an amount sufficient to cover your advances or obligations hereunder, and you are to have specific claim and lien on such policies and their proceeds to the amount of your interest in the goods thereby insured. [35]

The undersigned hereby consents to any renewal and extension of time of payment of any draft, drafts or other indebtedness that may be granted by you, and do also consent that the securities set forth in said acceptance agreement may be exchanged or surrendered from time to time without notice to or further assent from the undersigned, and that the undersigned will remain bound by this guarantee, notwithstanding such changes, guarantees, renewals and extensions.

Upon our failure to comply with any of the terms hereof or upon the non-payment by us of this or any other liability to you when due or at any other time or times thereafter then in such case all obligations and liabilities direct and contingent from us to you whether arising hereunder or otherwise shall at your election forthwith become due and payable without demand or notice and we hereby give to you full power and authority to sell, assign, transfer and deliver the whole or any part of the securities, bills of lading or documents of title or the goods represented thereby or of any securities substituted therefor or added thereto at any broker's board or at any public or private sale with or without notice or advertisement at your option and do further agree that you may become a purchaser at such sale if at any broker's board or at public auction and hold the property or security so purchased as your own property absolutely free from any claim of or in the right of ourselves. In

case of any sale or other disposition of the whole or any part of the security or property aforesaid, you may apply the proceeds of such sale or disposition to the payment of all legal or other costs and expenses of collection, sale and delivery and of all expenses incurred in protecting the security or other property or the value thereof, as hereinafter provided and may apply the residue of such proceeds to the payment of this or of any then existing liability of ours to you whether then payable or not, returning the overplus to us and in case of any deficiency we agree to pay to you the amount thereof forthwith with legal interest. You may also upon any such non-payment apply the balances of all our deposit accounts in the same way that you are authorized to apply the proceeds of any sale of the security or property hereunder.

You may pay taxes, charges, assessments, liens or insurance premiums upon the security or any part of it, or otherwise protect the value thereof or of the property represented thereby, and may charge against us all expenditures so incurred; but you shall be under no duty or liability with respect to the protection or collection of any security held hereunder or of any income thereon, nor with respect to the protection of preservation of any rights pertaining thereto, beyond the safe custody of such security. We hereby agree that if, in your opinion, the market value of the security hereby or hereafter pledged to secure this obligation, after de-

ducting all charges against the same is at any time less than the amount thereof and ..... per centum thereof added thereto we will upon demand, deposit satisfactory additional security so that the market value of the security pledged hereunder, after deducting all charges, shall always equal the amount of this obligation plus such additional percentage.

We hereby agree to indemnify you against any liability or responsibility for the correctness, validity, or genuineness of any documents or any signatures or endorsements thereon representing goods which you hold, purchase or sell under this engagement, or for the description, quantity, quality or value of the property declared therein, or of any insurance certificates or policies, and against any general loss or charges or other expenses incurred accruing with respect to such goods through delay in transmission of shipping documents or through any other cause, which charges and other expenses we agree to pay. We further agree that no delay on [36] your part in exercising any right hereunder shall operate as a waiver of such rights or of any right under this obligation.

RICHFIELD OIL COMPANY
OF CALIFORNIA,

(Seal) By R. W. McKEE,
By W. E. HART,
Treasurer.

Dated: October 4, 1930. [37]

EXHIBIT "B"

ACCEPTANCE AGREEMENT

(Arising out of importation or exportation of goods)

To WELLS FARGO BANK & UNION TRUST CO., SAN FRANCISCO.

Dear Sirs:

We hand you herewith, for acceptance, the following drafts:

Number	Date	Covering following	Amount
	Nov. 24	Merchandise	$5000.00
	Marks	Numbers Description	

Payable in San Francisco to the order of Ourselves

It is agreed that the proceeds of the above will be used for financing the actual goods under consideration, and the proceeds of the sale of the goods shall be applied to liquidate the acceptance.

In consideration of your acceptance of the said draft or drafts the undersigned, jointly and severally, agree to pay you at the time of the acceptance a commission of ..... per cent, and further agree to pay you the amount of the said draft or drafts at your office one day before maturity. We waive all liability on your part in case the goods are not according to contract, either in description, quality, or quantity, or in any other respect. All bills of lading, warehouse receipts and

other documents of title and all money and goods held by you as security for any such acceptance shall also be held by you as security for any other liability from us to you whether then existing or thereafter contracted and bind ourselves to furnish you prior to ..... with shipping documents covering this merchandise or with exchange arising out of the transaction being financed by the credit.

We further agree to give and furnish you on demand additional security or to make payment on account in amounts and character satisfactory to you. If we fail to comply with any such demand or in case of our insolvency, assignment, bankruptcy, or failure in business, all our obligations and liabilities direct or indirect to you whether arising hereunder or otherwise shall forthwith become due and payable without demand or notice. All goods represented by bills of lading, warehouse receipts or other documents of title, pledged with you as security for your acceptances hereunder, shall be at all times covered by us by certificates of insurance under open policies to your order or by specific policies payable to you as your interest may appear, to an amount sufficient to cover your advances or obligations hereunder, and you are to have specific claim and lien on such policies and their proceeds to the amount of your interest in the goods thereby insured. [38]

The undersigned hereby consents to any renewal

and extension of time of payment of any draft, drafts or other indebtedness that may be granted by you, and do also consent that the securities set forth in said acceptance agreement may be exchanged or surrendered from time to time without notice to or further assent from the undersigned, and that the undersigned will remain bound by this guarantee, notwithstanding such changes, guarantees, renewals and extensions.

Upon our failure to comply with any of the terms hereof or upon the non-payment by us of this or any other liability to you when due or at any other time or times thereafter then in such case all obligations and liabilities direct and contingent from us to you whether arising hereunder or otherwise shall at your election forthwith become due and payable without demand or notice and we hereby give to you full power and authority to sell, assign, transfer and deliver the whole or any part of the securities, bills of lading or documents of title or the goods represented thereby or of any securities substituted therefor or added thereto at any broker's board or at any public or private sale with or without notice or advertisement at your option and do further agree that you may become a purchaser at such sale if at any broker's board or at public auction and hold the property or security so purchased as your own property absolutely free from any claim of or in the right of ourselves. In case of any sale or other disposition of the whole

or any part of the security or property aforesaid, you may apply the proceeds of such sale or disposition to the payment of all legal or other costs and expenses of collection, sale and delivery and of all expenses incurred in protecting the security or other property or the value thereof, as hereinafter provided and may apply the residue of such proceeds to the payment of this or of any then existing liability of ours to you whether then payable or not, returning the overplus to us and in case of any deficiency we agree to pay to you the amount thereof forthwith with legal interest. You may also upon any such non-payment apply the balances of all our deposit accounts in the same way that you are authorized to apply the proceeds of any sale of the security or property hereunder.

You may pay taxes, charges, assessments, liens or insurance premiums upon the security or any part of it, or otherwise protect the value thereof or of the property represented thereby, and may charge against us all expenditures so incurred; but you shall be under no duty or liability with respect to the protection or collection of any security held hereunder or of any income thereon, nor with respect to the protection of preservation of any rights pertaining thereto, beyond the safe custody of such security. We hereby agree that if, in your opinion, the market value of the security hereby or hereafter pledged to secure this obligation, after deducting all charges against the same is at any time

less than the amount thereof and ..... per centum thereof added thereto we will upon demand, deposit satisfactory additional security so that the market value of the security pledged hereunder, after deducting all charges, shall always equal the amount of this obligation plus such additional percentage.

We hereby agree to indemnify you against any liability or responsibility for the correctness, validity, or genuineness of any documents or any signatures or endorsements thereon representing goods which you hold, purchase or sell under this engagement, or for the description, quantity, quality or value of the property declared therein, or of any insurance certificates or policies, and against any general loss or charges or other expenses incurred accruing with respect to such goods through delay in transmission of shipping documents or through any other cause, which charges and other expenses we agree to pay. We further agree that no delay on [39] your part in exercising any right hereunder shall operate as a waiver of such rights or of any right under this obligation.

RICHFIELD OIL COMPANY
OF CALIFORNIA,

(Seal) By J. F. WALLACE,
By B. B. WILSON.
Treasurer.

Dated: November 25, 1930. [40]

EXHIBIT "C"

AMENDMENT TO PROOF OF CLAIM.

State of California,
City and County of San Francisco—ss.

On the 19th day of May, 1931, came F. I. Raymond, of and in said State and City and County, and made oath and says he is authorized to make this proof.

That affiant is Vice-President and Cashier of Wells Fargo Bank & Union Trust Co., a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City and County of San Francisco, claimant herein, and verified this amendment to proof of claim for the following reasons;

That claimant has no Treasurer and that of all its officers the duties of affiant correspond most nearly to those of Treasurer;

That as set forth in the verified claim of claimant filed with the Receiver herein on the 30th day of March, 1931, a copy of which claim is hereunto annexed, marked Exhibit "A" [41] and made a part hereof, Richfield Oil Company of California, a corporation was, on the 15th day of January, 1931, and at the time of the appointment of the Receiver herein, and still is, justly and truly indebted to said claimant in the sum of $636,189.95;

That the basis of said indebtedness is for moneys loaned by claimant to said Richfield Oil Company

of California at its special instance and request, evidenced by a promissory note dated July 12, 1930, a copy of which said promissory note is attached to said verified claim hereinbefore referred to, as Exhibit "A" thereof, together with interest thereon from November 30, 1930, at the rate of six per cent per annum and accruing interest, and also for certain moneys paid by claimant at the special instance and request of said Richfield Oil Company of California for and in behalf of said Richfield Oil Company of California, all as more particularly set forth in said verified claim, Exhibit "A", to which reference is hereby made for the particulars of said claim;

That at the time of the preparation of said claim the information therefor was compiled and delivered to affiant by the Note Department of said claimant, Wells Fargo Bank & Union Trust Co.; said Note Department was then and now is, a separate Department of said Wells Fargo Bank & Union Trust Co.; the Foreign Department likewise was then and now is a separate Department of said Claimant, Wells Fargo Bank & Union Trust Co.; said Note Department at that time kept and does still keep records of loans from and indebtedness to said Wells Fargo Bank & Union Trust Co., evidenced by promissory notes, and had not at that time and has now no records in its Department of collateral or other security deposited with said Foreign Department or with [42] any of the other separate

Departments of said Wells Fargo Bank & Union Trust Co.;

That therefore, through inadvertence and lack of knowledge by said Note Department said claim, Exhibit "A", stated that there were no offsets or counterclaims to the debt set forth in said claim and no claim to preference in payment from the receivership estate was made, and further stated that no securities were held by said claimant for said indebtedness whereas at said time the truth and the facts were and now are, that unknown to said Note Department there were and now are certain collateral securities in the possession of said Foreign Department as security for all of the said indebtedness of said Richfield Oil Company of California to said Wells Fargo Bank & Union Trust Co., claimant herein, more particularly as follows, to-wit:

> On or about the 14th day of October, 1930, and prior to the appointment of the Receiver herein, said Richfield Oil Company of California, a corporation delivered to claimant, Wells Fargo Bank & Union Trust Co., and particularly to its said Foreign Department, a certain Acceptance Agreement in the amount of $150,000.00, a copy of which said Agreement is annexed hereto, marked Exhibit "B" and by reference made a part hereof.
>
> On or about the 28th day of November, 1930, and prior to the appointment of the Receiver herein, said Richfield Oil Company of Cali-

fornia, a corporation, delivered to claimant, Wells Fargo Bank & Union Trust Co., and particularly to its Foreign Department, a certain Acceptance Agreement in the amount of $5,000.00, a copy [43] of which said Agreement is attached hereto, marked Exhibit "C" and by reference made a part hereof.

Pursuant to the terms of said Agreements hereinbefore referred to and prior to the appointment of a Receiver herein, said Richfield Oil Company, a corporation, delivered to claimant, Wells Fargo Bank & Union Trust Co., and particularly to its Foreign Department, certain drafts drawn by it upon the following persons and for the following amounts and upon the following terms:

RICARDO VALASQUES, Twelve Hundred Nineteen Dollars ($1219.00), maturing April 15, 1931;

BUENO & CO. Twenty-four Hundred Forty-one Dollars ($2441.00), Fifteen Hundred Dollars ($1500.00) of which matured on January 10, 1931;

SOCIEDAD AUTOMAVILIANIA COLOMBIANA, Seven Hundred Seventy-nine and 10/100 ($779.10) Dollars, which matured January 25, 1931, but which maturity date was extended by said Richfield Oil Company of California to February 13, 1931;

ITO BERGONZALI, Fifty-three and Forty-five one-hundredths Dollars ($53.45), maturing January 15, 1931;

BIRLA BROS., Fifty-five Thousand Nine Hundred and 75/100 Dollars ($55,900.75), maturing May 14, 1931;

BIRLA BROS., Sixty-three Thousand Nine Hundred Fifty Dollars ($63,950.00), maturing May 14, 1931;

BIRLA BROS., Twenty-three Thousand Six Hundred Seven and 50/100 Dollars ($23,-607.50), maturing August 19, 1931.

Pursuant to the terms of said Agreements, Exhibits "B" and "C", and particularly the provisions thereof providing that the security deposited thereunder should be held by said Bank not alone as security for the Acceptances referred to in said Agreements, but also as security for any other liability of said Richfield Oil Company of California to claimant, Wells Fargo Bank & Union Trust Co., whether then existing or thereafter [44] contracted, and pursuant likewise to the laws and statutes of the State of California with respect to the banker's lien of claimant and particularly Section 3054 of the Civil Code, claimant asserts a lien upon said drafts and upon all moneys heretofore paid by, or in behalf of the drawees named in said drafts (except as hereinafter set forth) and upon any and all moneys which may hereafter be paid by, or in behalf of the drawees of said drafts and claim is hereby made by claimant against the receivership estate for the balance of said indebtedness to claimant remaining unpaid after crediting the moneys

last hereinabove referred to, paid or to be paid by the drawees of said drafts:

That there has been paid on account of said drafts:

The principal amount of the draft of Ricardo Velasquez, to-wit: the sum of $1219.00, together with $27.63 interest due thereon, against which there was a collection charge of $1.52, making the net sum of $1245.11 collected.

The principal amount of the draft of Bueno & Co. to-wit: the sum of $2441.00, against which there was a collection charge of $15.42, making the net sum of $2425.58 collected.

Of said principal sum of $2441.00 claimant has remitted to the Receiver of Richfield Oil Company of California the sum of $1956.52 (being the sum of $1970.00 collected on account of said draft, less collection charges of $13.48) pursuant to the request of said Receiver hereinafter set forth. Said sum of $1245.11 collected on the draft of said Ricardo Velasquez and said sum of $469.06 (being the sum of $471.00, the balance on account of the draft of Bueno & Co., less the sum of $1.94 collection charges) have been claimed and applied by claimant pursuant to said Agreements marked Exhibits "B" and "C" and pursuant to said banker's lien hereinbefore referred to and said moneys are held as a credit against the indebtedness of said Richfield Oil Company of California to claimant. [45]

With respect to said drafts hereinbefore referred to, said Exhibits "B" and "C" and said banker's lien, claimant sets forth the following further facts:

Upon receiving notice on or about the 15th day of January, 1931, that Wm. C. McDuffie had been appointed as Receiver of Richfield Oil Company of California claimant, in exercise of its banker's lien, applied the balance of moneys on deposit or on hand of Richfield Oil Company of California in the possession of claimant, on account of the then past due indebtedness of said Richfield Oil Company of California to claimant;

On or about the 16th day of January, 1931, said Receiver telegraphed to claimant as follows:

> "As receiver I am ordered by Federal Court to take over all assets including cash in banks stop While you have undoubted right of offset, such right if exercised will seriously cripple receivers operations. It is necessary therefore to request that all banks restore to receiver full cash balance stop Please therefore transfer such funds to a new account on your books in my name as receiver evidence of my authority and signature cards will follow by mail stop Local banks have indicated they will acquiesce in this program."

In response thereto claimant replied to said Receiver as follows:

> "Replying telegram we are willing to restore into your name as Receiver Richfield's balance

in checking account provided we are notified by you that all company's banks have taken similar action Stop We are holding certain collections as security for acceptance Please understand that we continue to reserve all our rights for bankers lien against these collections."

By said last named telegram claimant expressly reserved its right to exercise its lien against said collections held as security for acceptances, including said drafts hereinbefore referred to. Said reservation has at no time subsequently been waived or withdrawn by claimant; except that claimant subsequently remitted to the Receiver the sum of $1956.54 on account of the Bueno & Co. draft hereinbefore referred to. [46]

No part of the security heretofore referred to (except said sum of $1956.54 on account of said Bueno & Co. draft remitted to said Receiver as aforesaid) held by claimant is in any manner waived and with the exception of the security heretofore referred to no other security is held by said claimant for said indebtedness;

That as hereinbefore mentioned affiant and the Note Department of claimant at the time of the execution and filing of claimant's claim, had no knowledge of said securities so held by the Foreign Department of claimant and through inadvertence,

therefore, failed to include said securities in claimant's statement of claim.

F. I. RAYMOND,

Affiant

WELLS FARGO BANK & UNION TRUST CO. a corporation,

Claimant.

Subscribed and sworn to before me this 19th day of May, 1931.

[Seal] AGNES M. COLE,

Notary Public in and for the City and County of San Francisco, State of California. [47]

EXHIBIT "D"

ORDER.

Upon the reading and filing of the petition of Wells Fargo Bank & Union Trust Co. for an order authorizing the petitioner to file herein its Amendment to Proof of Claim and instructing Wm. C. McDuffie, Receiver herein, to receive and accept the same and upon the reading and filing of the stipulation of counsel in reference to the matters in said petition mentioned, and good cause appearing therefor,

IT IS HEREBY ORDERED that Wells Fargo Bank & Union Trust Co. is hereby authorized to file its Amendment to its verified Proof of Claim herein and Wm. C. McDuffie, Receiver herein, is

hereby instructed to receive and accept the same for filing.

IT IS HEREBY FURTHER ORDERED that the receipt and acceptance for filing of said Amendment to Proof of Claim by the said Wm. C. McDuffie, as Receiver herein, shall be without prejudice to the rejection thereof and/or the making of any objection by said Receiver or any other person to its contents or the time and manner of the filing thereof, and without prejudice to the rights of the said Wm. C. McDuffie, as such Receiver, or Richfield Oil Company of California in the cause now pending in the United States District Court, Northern District of California, [48] Southern Division, entitled, "The Republic Supply Company of California, a corporation, complainant, vs. Richfield Oil Company of California, a corporation, defendant—Wm. C. McDuffie, Ancillary Receiver for Richfield Oil Company of California, vs. Wells Fargo Bank & Union Trust Co.," being cause in Equity No. 2758-K in the files of the Clerk of said Court.

Done in open Court at Los Angeles, California, this 29 day of May, 1931.

WILLIAM P. JAMES,
United States District Judge.

[Endorsed]: Due service of the within Answer of Wells Fargo Bank & Union Trust Co., and receipt of a copy thereof are hereby admitted this 25th day of July, 1931.

GREGORY, HUNT & MELVIN,
Attorneys for Complainant.

[Endorsed]: Filed Jul. 25, 1931. [49]

[Title of Court and Cause.]

ANCILLARY AMENDED BILL OF COMPLAINT

By leave of court first had and obtained, William C. McDuffie, as ancillary receiver for Richfield Oil Company of California, a corporation, brings this his amended bill of complaint against Wells Fargo Bank & Union Trust Co., a corporation, and alleges as follows:

I.

That complainant, The Republic Supply Company of California, is a corporation duly organized and existing under the laws of the State of California; that its office and principal place of business is in the City of Los Angeles, State of California, and that it is a citizen and resident of the State of California.

II.

That defendant, Richfield Oil Company of California, is a corporation duly organized and existing under the laws of the State of Delaware; that its [50] office and principal place of business is in the City of Los Angeles, State of California, and that it is a citizen and resident of the State of Delaware.

III.

That defendant, Wells Fargo Bank & Union Trust Co., is a corporation duly organized and existing under and by virtue of the laws of the State of California; that its principal place of business is in the City and County of San Francisco, State of

California, and that it is a citizen and resident of said State of California.

IV.

That on January 15, 1931, said The Republic Supply Company of California, a corporation, filed an action numbered S-125-J in the District Court of the United States in and for the Southern District of California, Central Division, against said Richfield Oil Company of California, a corporation. That said bill of complaint alleged that said complainant was a California corporation and the said defendant was a Delaware corporation. That said bill of complaint further alleged that said defendant was indebted to said complainant in a sum in excess of $275,000 upon an unsecured open book account for goods, wares and merchandise sold and delivered by said complainant to said defendant. That said bill of complaint further alleged that certain other creditors were pressing said defendant for payment of their claims and threatening attachments, executions, seizures and forced sales of the property of said defendant, with the necessary consequence that said defendant would be compelled to cease its business and that its assets, if sacrificed, might not realize an amount sufficient to pay the creditors of said defendant in full. That said bill of complaint prayed that the rights of all creditors of said defendant be determined and that meanwhile a receiver be appointed of all of the property and assets of said defendant and continue to carry on

the business conducted by said defendant, and that an injunction issue against said defendant, its creditors, stockholders and all persons claiming or acting by, through or under them, to restrain them from interfering in any manner with said receiver or taking possession of the property and assets of said defendant and carrying on and conducting its business. [51]

That said defendant formally appeared and filed its answer to said bill of complaint, admitting the allegations of said bill and consenting to the relief demanded. That upon the same day that the action was commenced, said Court appointed William C. McDuffie as receiver for Richfield Oil Company of California, a corporation, with the powers and duties as to such receivership more fully set forth in the order appointing said receiver, which was duly signed by the Honorable William P. James, United States District Judge then presiding in said Court, at 9:40 A. M. on January 15, 1931, a copy of which order is hereunto annexed, marked Exhibit "A" and made a part hereof. That pursuant to said order, said William C. McDuffie, on said 15th day of January, 1931, duly qualified as such receiver and ever since has been and is now the duly appointed, qualified and acting receiver for said Richfield Oil Company of California, a corporation.

V.

That thereafter, and on said 15th day of January, 1931, in the action of The Republic Supply Com-

pany of California, a corporation, Complainant, v. Richfield Oil Company of California, a corporation, Defendant, duly filed in the District Court of the United States in and for the Northern District of California, Southern Division, No. 2758-K, said William C. McDuffie was appointed ancillary receiver by the Honorable Frank H. Kerrigan, United States District Judge in and for said Northern District of California, Southern Division, of all the property, assets and business of said defendant in the Northern District of California. That a copy of said order appointing said William C. McDuffie such ancillary receiver is hereunto annexed, marked Exhibit "B" and made a part hereof. That pursuant to said order, and on the 20th day of January, 1931, said William C. McDuffie filed his oath of office with the Clerk of the United States District Court in said District and duly qualified as such ancillary receiver and ever since said time has been and is now the duly appointed, qualified and acting ancillary receiver of and for said Richfield Oil Company of California, a corporation, within said Northern District of California. [52]

VI.

That on or about the 12th day of July, 1930, said Richfield Oil Company of California, a corporation, by authorization of its Board of Directors, borrowed from said defendant, Wells Fargo Bank & Union Trust Co., a corporation, the sum of $625,000 and at that time made, executed and de-

livered to said Wells Fargo Bank & Union Trust Co., or order, its promissory note in the principal sum of $625,000, with interest thereon at the rate of six per cent (6%) per annum, payable ninety (90) days after date. That no agreement of any kind for collateral or as security for the repayment of said amount was executed then and there by said Richfield Oil Company of California, a corporation, to or for the benefit of said Wells Fargo Bank & Union Trust Co., a corporation.

VII.

That thereafter, and on or about the month of August, 1930, an agreement was entered into by and between said Richfield Oil Company of California, a corporation, and said Wells Fargo Bank & Union Trust Co., a corporation, whereby said Richfield Oil Company of California, a corporation, agreed to deposit with said Wells Fargo Bank & Union Trust Co., a corporation, for collection, drafts drawn by said Richfield Oil Company of California on certain of its customers residing in foreign countries, which drafts were drawn for payment of certain shipments of commodities by said Richfield Oil Company of California, a corporation, to said customers. That it was then and there further agreed by and between said Richfield Oil Company of California, a corporation, and said Wells Fargo Bank & Union Trust Co., a corporation, that said arrangement for the collection of said foreign drafts by said Wells Fargo Bank & Union Trust Co. was

separate and distinct from any other financial transactions between said parties.

That pursuant to said agreement, said Richfield Oil Company of California, a corporation, thereafter deposited with said Wells Fargo Bank & Union Trust Co., a corporation, certain of its foreign drafts for collection, among which were the following drafts deposited on or about October 8, 1930:

> Draft No. 103005, dated October 8, 1930, drawn by said Richfield Oil Company of California, a corporation, on Birla Brothers, Ltd., at Calcutta, India, in the sum of $63,950, payable at 180 days sight; [53]
>
> Draft No. 103006-B, dated October 8, 1930, drawn by said Richfield Oil Company of California, a corporation, on Birla Brothers, Ltd., at Calcutta, India, in the sum of $55,900.75, payable at 180 days sight.

That in addition to the two drafts hereinabove set forth, said Richfield Oil Company of California, a corporation, thereafter, and on or about January 8, 1931, deposited with said Wells Fargo Bank & Union Trust Co., a corporation, for collection, its draft No. 13107 drawn on Birla Brothers, Ltd., at Calcutta, India, in the sum of $23,607.50, payable at 180 days sight, and which became due upon the 19th day of August, 1931.

VIII

That thereafter and during the months of October and November, 1930, said Richfield Oil Company of California, a corporation, and said Wells Fargo Bank & Union Trust Co., a corporation, made and entered into an agreement that drafts drawn on said Wells Fargo Bank & Union Trust Co. by said Richfield Oil Company of California, a corporation, and payable to said Richfield Oil Company of California, duly endorsed, would be endorsed and accepted for payment by said Wells Fargo Bank & Union Trust Co., termed "Banker's Acceptances," and that such acceptances would be sold up to the amount of $155,000 and the proceeds thereof, less discounts, should be credited to the account of Richfield Oil Company of California, a corporation, at said bank; that in said agreement it was further understood and agreed that the proceeds of said Banker's Acceptances were to be used for financing the exportation of certain goods and commodities then under consideration, and that the proceeds of the sale thereof should be applied to liquidate said acceptances, and that such acceptances were to be payable ninety (90) days after the date of each thereof, and were to be based upon drafts of Richfield Oil Company of California, a corporation, drawn upon its responsible foreign customers for shipments of such goods and commodities, and which said drafts were to be slightly in amount and of a maturity shorter than the Banker's Acceptances for the payment of which before ma-

turity such drafts were respectively reserved and marked

That pursuant to such agreement, and on or about the 8th day of October, 1930, there were delivered to said Wells Fargo Bank & Union Trust Co. by said [54] Richfield Oil Company of California two drafts drawn upon Birla Brothers, Ltd., of Calcutta, India, one numbered 103004 in the amount of $63,950, due and payable at sight, and the other numbered 103006A in the amount of $55,900.76, also due and payable at sight, amounting in all to the sum of $119,850.76; that thereafter and pursuant to said agreement, nine Banker's Acceptances as aforesaid, in the total amount of $115,000, all due January 6, 1931, were executed, negotiated and sold by said Wells Fargo Bank & Union Trust Co. and the proceeds thereof, less the amount of discounts thereon, were credited to the commercial deposit account of Richfield Oil Company of California at said Wells Fargo Bank & Union Trust Co.; that thereafter and pursuant to said agreement, other and additional foreign drafts were deposited under the terms of said agreement and Banker's Acceptances in the aggregate amount of $40,000 were negotiated and sold and the proceeds deposited to the deposit account of said Richfield Oil Company of California at said Wells Fargo Bank & Union Trust Co., as aforesaid; that thereafter, and on the 20th day of February, 1931, the total amount of said Banker's Acceptances so negotiated as aforesaid, in the sum of $155,000, was fully paid and

discharged by the application of the proceeds of said drafts drawn upon customers arising out of the exportation of goods and commodities as aforesaid.

That at the time of making said agreement it was understood and agreed by and between Richfield Oil Company of California and Wells Fargo Bank & Union Trust Co., that the proceeds of the sale of said goods covered by said foreign drafts so deposited pursuant to such agreement as the basis for said Banker's Acceptances should be reserved for and applied to the liquidation of said Banker's Acceptances before the due date thereof, and that any surplus arising therefrom should be held separate and apart from any and all other financial obligations or transactions of Richfield Oil Company of California to or with the Wells Fargo Bank & Union Trust Co.

IX

That at the time of the appointment and qualification of William C. McDuffie as receiver for Richfield Oil Company of California, a corporation, said Richfield Oil Company of California had borrowed, without security, from [55] and was indebted to certain commercial banks in various parts of the United States in an amount exceeding ten million dollars, including said Wells Fargo Bank & Union Trust Co. upon an unsecured note in the amount of approximately $625,000; that in each of said banks, including said Wells Fargo Bank & Union Trust Co., said Richfield Oil Company of California main-

tained a commercial deposit account and deposited therein moneys and the proceeds of collections of checks and drafts, and issued its checks and drafts thereon in the ordinary course of business.

That at or about the time of the appointment and qualification of William C. McDuffie as receiver for Richfield Oil Company of California, a corporation, it was agreed by and between said receiver and each of said banks, including said Wells Fargo Bank & Union Trust Co., that each of said banks would transfer such balances so held in the name of Richfield Oil Company of California to that of William C. McDuffie as its receiver, and would carry on and conduct said commercial accounts in the ordinary course of business as aforesaid, and would not exercise any claim of a banker's lien upon said balances and collections, in order to enable said receiver to carry on and transact the affairs of said Richfield Oil Company of California for the benefit of the creditors thereof, including said Wells Fargo Bank & Union Trust Co., and all others interested in said company, until the termination of such receivership.

That thereupon and thereafter all of said drafts, pursuant to said agreement, transferred said balances to the credit of said receiver and have since continued to carry on and conduct said commercial deposit accounts with said receiver as the same had been conducted with said Richfield Oil Company of California, a corporation, as aforesaid, and have refrained from asserting any claim of banker's

lien or set-off against said balances and collections therein.

That said Wells Fargo Bank & Union Trust Co., in violation of its said agreement by and with said receiver and with said other banks, on the 9th day of May, 1931, notified said Richfield Oil Company of California that it proposed to apply the proceeds of the collection of the drafts hereinbefore mentioned in paragraph VII hereof to its said preexisting unsecured obligation amounting to approximately $625,000; that by so doing a preference in the payment of its said [56] obligation over that of said other banks and creditors of Richfield Oil Company of California similarly situated would be accomplished, to the detriment of said estate under the control of said receiver and all persons interested therein, and an unjust and inequitable advantage would be taken over the other banks and creditors of said corporation, all of which said banks have fully performed and complied with the terms and conditions of said agreement.

That said receiver, in the interest of all of said other creditors of said Richfield Oil Company of California, and acting under and pursuant to the orders of this Honorable Court, demanded the restoration and repayment to his account of said moneys so sought to be applied by said Wells Fargo Bank & Union Trust Co. as aforesaid, and that said Wells Fargo Bank & Union Trust Co. then and there refused and still refuses so to do.

X

That pursuant to its agreement with said William C. McDuffie, Receiver, and said other banks, said Wells Fargo Bank & Union Trust Co. credited the balances of Richfield Oil Company of California, a corporation, to said Receiver's account and continued to make collections of checks and drafts and to make deposits of the proceeds thereof in the ordinary course of business, crediting the same to the account of said Receiver in said bank until the 9th day of May, 1931, as hereinbefore alleged, when, in violation of its said agreement made and executed as aforesaid, said Wells Fargo Bank & Union Trust Co. notified said William C. McDuffie, Receiver, that it intended to apply to the partial liquidation of its unsecured obligation of approximately $625,000 the proceeds of said three drafts described in paragraph VII hereof, then in course of collection as aforesaid.

That thereupon, and on or about the 13th day of May, 1931, said Receiver revoked and withdrew the power and authority of said Wells Fargo Bank & Union Trust Co. to collect and receive the proceeds of said drafts in this paragraph mentioned, and notified said Wells Fargo Bank & Union Trust Co. and its agent and correspondent at Calcutta, India, that the authority of said Wells Fargo Bank & Union Trust Co. and of its correspondent and agent to collect and receive the proceeds of said two drafts maturing May 14, 1931, in the amount of $119,850.76, [57] was revoked and withdrawn;

that notwithstanding such revocation and withdrawing of such authority, said Wells Fargo Bank & Union Trust Co. did, without right or authority, present and collect said drafts, and applied the proceeds thereof to the liquidation in part of its said unsecured obligation of approximately $625,000 hereinbefore mentioned, in violation of the terms of its said agreement and without any right, warrant or authority whatsoever.

XI

That after the appointment and qualification of said William C. McDuffie as receiver for said Richfield Oil Company of California, a corporation, as aforesaid, and on or about the 28th day of March, 1931, said Wells Fargo Bank & Union Trust Co., a corporation, filed with said receiver its proof of claim, which alleged that said

> "Richfield Oil Company of California, a corporation, was on the 15th day of January, 1931, and at the time of the appointment of the Receiver herein and still is, justly and truly indebted to said claimant in the sum of Six Hundred Thirty-six Thousand One Hundred Eighty-nine and 95/100 Dollars ($636,189.95);
>
> The basis of said debt is as follows:
>
> Moneys loaned by claimant to said Richfield Oil Company of California at its special instance and request, evidenced by promissory note dated July 12, 1930, copy of which said promissory note is attached hereto marked Exhibit 'A' and made a part hereof;

Interest on said promissory note from November 30, 1930, to March 16, 1931, at the rate of six per cent (6%) per annum, and accruing interest until paid;

Moneys paid by claimant at the special instance and request of said Richfield Oil Company of California for attorneys fees and preparation of indenture on behalf of creditor banks in the sum of $91.28, together with interest thereon from the 11th day of February, 1931, to the 16th day of March, 1931, at the rate of six per cent (6%) per annum, and accruing interest until paid;

Moneys paid by claimant at the special instance and request of said Richfield Oil Company of California for legal expenses in the sum of $56.39, together with interest thereon from the 4th day of March, 1931, to the 16th day of March, 1931, at the rate of six per cent (6%) per annum, and accruing interest until paid;

That there are no offsets or counterclaims to said debt; no notes or other evidences of indebtedness have been taken or received except those of which copies are hereto attached; no Judgment has been rendered for such indebtedness or any part thereof; and no claim to preference in payment from the receivership estate is made;

That no securities are held by said claimant for said indebtedness." [58]

That no note or other evidence of indebtedness, other than a copy of said note dated July 12, 1930 in the principal sum of $625,000, was attached to said proof of claim.

XII.

That said two foreign drafts dated October 8, 1930, hereinabove set forth in paragraph VII hereof, became due and payable by said drawee on the 14th day of May, 1931, and at said time, said drawee, Birla Brothers, Ltd., paid to Nederlandsche Handel Maatschappij, at Calcutta, India, the correspondent bank of said Wells Fargo Bank & Union Trust Co., a corporation, the full amount of the proceeds of each of said drafts, amounting to the sum of $119,850.75, which said sum is now in the course of transmittal by mail from said Nederlandsche Handel Maatschappij to said Wells Fargo Bank & Union Trust Co., a corporation.

XIII.

That said Wells Fargo Bank & Union Trust Co., a corporation, without right in law or equity, now claims a lien on each of said drafts and the proceeds thereof, and further claims the right and threatens to apply said proceeds, when received from its said correspondent bank, towards the payment of the unsecured indebtedness owing it from said Richfield Oil Company of California, a corporation, evidenced by said promissory note dated July 12, 1930 in the sum of $625,000, plus accrued interest.

XIV.

That said Wells Fargo Bank & Union Trust Co., a corporation, without right in law or equity further claims a lien on the following drafts and the proceeds thereof, which were deposited by said Richfield Oil Company of California therein for collection in the ordinary course of business:

Draft drawn by Richfield Oil Company of California, a corporation, on Ricardo Velasques in the sum of $1,219 maturing April 15, 1931;

Draft drawn by Richfield Oil Company of California, a corporation, on Bueno & Co. in the sum of $2,441, of which $1,500 matured on January 10, 1931;

Draft drawn by Richfield Oil Company of California, a corporation, on Sociedad Automaviliania Colombiana in the sum of $779.10, which matured January 25, 1931, but which maturity date was extended by said Richfield Oil Company of California to February 13, 1931;

Draft drawn by Richfield Oil Company of California, a corporation, on Ito Bergonzali in the sum of $53.45, maturing January 15, 1931. [59]

That said Wells Fargo Bank & Union Trust Co., a corporation, has already applied towards the payment of said unsecured indebtedness owing to it from said Richfield Oil Company of California, a corporation, evidenced by said promissory note dated July 12, 1930, part of the proceeds of said

last mentioned drafts, and threatens, in violation of its said agreements, to so apply the remainder of said proceeds, when received by it from its correspondent bank or banks.

XV.

That pursuant to said order of the District Court of the United States in and for the Southern District of California, Central Division, hereto annexed and marked Exhibit "A", appointing said William C. McDuffie receiver for said Richfield Oil Company of California, a corporation, and pursuant to said order of the District Court of the United States in and for the Northern District of California, Southern Division, hereto annexed and marked Exhibit "B", appointing said William C. McDuffie ancillary receiver for said Richfield Oil Company of California, a corporation, said receiver was authorized forthwith to take and have complete exclusive control, possession and custody of all the property and assets owned by or under the control of or in the possession of said Richfield Oil Company of California, a corporation, real, personal and mixed, of every kind, character and description, within the Ninth Judicial District, and all persons, firms and corporations were forthwith ordered to deliver to said receiver all of said property and assets of said Richfield Oil Company of California, a corporation.

That payment by said Wells Fargo Bank & Union Trust Co., a corporation, to said William C. McDuffie, as receiver for said Richfield Oil Company

of California, a corporation, of the proceeds of all of said drafts is imperative and essential for the continued operations of the business of said Richfield Oil Company of California, a corporation, by said receiver pursuant to the orders of said Courts; that said receiver is the true owner of the proceeds of said drafts, and said Wells Fargo Bank & Union Trust Co., a corporation, has no right, title or interest in or to the same or any part thereof. [60]

WHEREFORE, said William C. McDuffie, ancillary receiver and complainant herein, prays for relief as follows:

1. That said Wells Fargo Bank & Union Trust Co., a corporation, be ordered and directed to forthwith deliver to William C. McDuffie, ancillary receiver, complainant herein, the proceeds of each of the two foreign drafts set forth in paragraph VII hereof immediately upon their receipt by said Wells Fargo Bank & Union Trust Co., a corporation, from said Nederlandsche Handel Maatschappij, without any right of offset or claim thereupon.

2. That said Wells Fargo Bank & Union Trust Co., a corporation, be ordered and directed to forthwith pay over to said William C. McDuffie, ancillary receiver, complainant herein, the proceeds of said foreign draft in the sum of $23,607.50, deposited with it for collection by said Richfield Oil Company of California, a corporation, drawn on Birla Brothers, Ltd., at Calcutta, India, and maturing on August 19, 1931, immediately upon its receipt

by said Wells Fargo Bank & Union Trust Co., a corporation, from said Nederlandsche Handel Maatschappij, and the proceeds of all other foreign drafts deposited with it for collection by said Richfield Oil Company of California, a corporation, without any right of offset or claim thereupon.

3. That temporarily and during the pendency of this suit, an injunction be issued against said Wells Fargo Bank & Union Trust Co., a corporation, and all of its officers, agents and employees, and all other persons claiming or acting by, through or under it, or any or all of them, to restrain them from disposing of any of said drafts or the proceeds thereof, and that said complainant may have such other and further relief in the premises as the needs of the case may require and as may be agreeable to equity.

4. That this Honorable Court give to complainant herein, as receiver, such further directions and instructions relating to the possession of all of said drafts and the proceeds thereof as may by the Court be deemed just and equitable.

5. That a writ of subpoena be granted to said complainant to be directed to said defendant, Wells Fargo Bank & Union Trust Co., a corporation, in this proceeding, requiring said defendant to be and appear before this [61] Honorable Court within the time required by law and the practice of this Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and, further, to perform and abide by such further order,

direction and decree thereof as to this court shall seem meet.

GREGORY, HUNT & MELVIN,
Solicitors for Complainant,
William C. McDuffie, as ancillary receiver of Richfield Oil Company of California, a corporation.
[62]

State of California
City and County of San Francisco—ss.

Ward Sullivan, being first duly sworn, deposes and says:

That he is a member of the firm of Gregory, Hunt & Melvin, the solicitors for William C. McDuffie, ancillary receiver and complainant herein: that he has read the foregoing amended bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief and as to those matters he believes it to be true; that affiant makes this verification on behalf of said William C. McDuffie, ancillary receiver and complainant herein, for the reason that said William C. McDuffie is absent from the City and County of San Francisco, where affiant has his offices.

WARD SULLIVAN

Subscribed and sworn to before me this 28th day of November, 1931.

[Seal] GRACE SONNTAG
Notary Public in and for the City and County of San Francisco, State of California. [63]

EXHIBIT "A"

ORDER APPOINTING RECEIVER

This case came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, the Court being fully advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. William C. McDuffie is hereby appointed receiver of all the property, assets and business owned by or under the control or in the possession of the defendant, Richfield Oil Company of California, real, personal and mixed, of whatsoever kind and description, within the jurisdiction of this court, including all lands, buildings, plants, warehouses, pipe lines, refineries, tanks, ships, shipping facilities, wharves, docks and dockage facilities, and appurtenances, owned, controlled, leased or operated by said defendant, and all raw materials, materials in process of manufacture, finished materials, inventory, stock in trade, equipment, tools, machinery, furniture, supplies, merchandise and books of account, records, and other books, papers and accounts, cash on hand, in bank, or on deposit, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, bills and accounts receivable, and all rents, issues and profits and income accruing and to accrue from said assets, property and business, with authority to take possession of said assets and property and to con-

tinue said business as a going concern.

2. The defendant, its officers and employees, and any persons acting under its direction, shall deliver to the receiver any and all of the aforesaid properties, real, personal or mixed, in their possession or under their control.

3. All creditors, stockholders, and all persons claiming or acting by, through or under them, and all sheriffs and marshals and other officers, agents, attorneys, proctors, representatives, servants and employees, and all other persons, associations and corporations are hereby enjoined and restrained from instituting or prosecuting any action at law, or suit, or proceeding in equity or admiralty against the defendant, in any court of law or equity or admiralty, or before any association, organization or arbitration board, or arbitration by referee or umpire, or other court or tribunal, or otherwise, or from executing or issuing, or causing the execution or issuance, or the issuing out of any court of any writ, process, summons, attachment, subpoena, replevin or other proceeding for the purpose of impounding or taking possession of or interfering with any of the aforesaid property owned by or in the possession or under the control of said defendant, or of the receiver, or owned by the defendant and in the possession of any of its officers, agents or employees, and all sheriffs, marshals and other officers and their deputies, representatives and servants, and all other persons, associations and corporations are hereby enjoined and restrained from

removing, transferring, disposing of or attempting in any way to remove, transfer or dispose of, or in any way to interfere with any of the property, assets or effects in the possession of the defendant or of the receiver, and from doing any act or thing whatsoever to interfere with the possession and management by the receiver of the property and assets, or the business of the defendant, or in any way to interfere with the receiver in the discharge of any of his duties, or to interfere in any manner with the administration and disposition in this suit of the property and affairs of the defendant.

4. Said receiver is hereby authorized forwith to take and have complete exclusive control, possession and custody of all of the property and assets owned by or under the control of or in the possession of the defendant, real, personal and mixed of every kind, character and description within the Ninth Judicial Circuit, and all persons, firms and corporations, including the defendant, its officers, agents and employees, shall forthwith deliver to the receiver all property and assets of the defendant, or in its possession, or under its control, and the defendant, its officers, agents and employees are hereby directed upon the request of the receiver to endorse, transfer, set over and deliver to the receiver any and all shares or certificates of stock, notes, bills of exchange or other documents, or muniments of title outstanding in the name of or in the possession or under the control of the defendant, or as to which the defendant has any interest,

and to execute and deliver powers of attorney and proxies authorizing the receiver to vote on such shares of stock or certificates, and the receiver is hereby authorized to vote in person or by proxy any and all shares of stock standing in the name of the defendant.

5. The receiver is hereby authorized until the further order of this court to continue, manage and operate the business of the defendant, with full power and authority to carry on, manage and operate the business and properties of the defendant, and to buy and sell merchandise and supplies for cash or on credit as may be deemed advisable by said receiver, and to the extent that the receiver may determine that it is for the best interests of the receivership estate so to do, to perform and fulfill the contracts and obligations of the defendant, and to enter into new contracts incidental to the operation of its business, and to appoint and employ such managers, agents, employees, servants, accountants, attorneys and counsel as may in the judgment of the receiver be advisable or necessary in the management, conduct, control or custody of the receivership estate, and the receiver is hereby authorized to make such payments and disbursements out of the property and assets of the defendant in his possession as may be needful or proper for the preservation and operation of the properties and business of the defendant, to issue such receivers' certificates for the purpose of meet-

ing the obligations of said defendant as may be authorized from time to time by this court.

6. The receiver is hereby authorized to receive and collect rents, income and profits of any of the properties of the defendant, whether the same are now due or shall hereafter become due and payable, and to do such things, enter into such agreements, and employ such agents in connection with the management, care, preservation and operation of the properties of the defendant as the receiver may deem advisable, and to incur such expenses and make such disbursements as may in the judgment of the receiver be [64] necessary or advisable, including all bills and accrued charges for electric light and power, gas, water, insurance, freight and carriage charges on goods in transit, telephone charges, taxes and charges of the nature thereof, lawfully incurred or imposed upon the property prior to the receivership, and all claims for accrued wages, salaries and expenses of officers, agents and employees for services rendered prior to the date of this order but remaining unpaid at the date hereof, to the end that the operation of the business of the defendant may not be interfered with or interrupted.

7. The receiver is hereby authorized and empowered to institute, prosecute and defend, compromise, adjust, intervene in or become a party to such suits, actions, proceedings at law, in equity or in admiralty, including ancillary proceedings in

State or Federal Courts as may in the judgment of the receiver be necessary or proper for the protection, maintenance and preservation of the property and assets of the defendant and the conduct of its business, or the carrying out of the terms and provisions of this order, and likewise to defend, compromise and adjust, or otherwise dispose of, any and all suits, actions and proceedings instituted against him as receiver or against the defendant, and also to appear in and conduct the prosecution or defense of any action, suit or proceeding or to adjust or compromise any action, suit or proceeding now pending in any court by or against the defendant where such prosecution, defense or other disposition of such action, suit or proceeding will in the judgment of the receiver be advisable or proper for the protection of the property and assets of the defendant, and in his discretion to compound and settle with all debtors of the defendant, with persons having possession of its property or in any way responsible at law or in equity to the defendant upon such terms and in such manner as the receiver shall deem just and beneficial to the defendant and its creditors.

8. The receiver is hereby given a period of six (6) months from the date hereof within which to arrive at a determination as to what contracts including leases of the defendant the receiver should affirm or disaffirm and within that time to make his

election in that respect; the Court reserves the right if so advised from time to time to extend or diminish the time so granted to the receiver within which to make such election.

9. The receiver shall retain possession and continue to discharge the powers and duties aforesaid until the further order of this Court in the premises; but shall from time to time apply to this Court for such other and further orders and directions as he may deem necessary or advisable for the due administration of the receivership; and the receiver is hereby vested, in addition to the powers aforesaid, with all the general powers of receivers in cases of this kind, subject to the direction of this Court, and the receiver shall from time to time or when directed by the Court render to the Court reports of his proceedings and accountings with respect to all moneys received and disbursed by him or his agents.

10. The bond of the receiver in the sum of Three Million Five Hundred Thousand Dollars, conditioned that he will well and truly perform the duties of his office and duly account for all moneys and property which may come into his hands and abide and perform all things which he shall be directed to do by this Court, with sufficient sureties to be approved by a Judge of this Court, shall be forthwith filed in the office of the Clerk of this Court.

11. A copy of this order shall, within ten (10) days from the date hereof, be published in two issues of the Los Angeles Daily Journal, a newspaper

of general circulation, printed and published in the City of Los Angeles, State of California.

Dated: January 15, 1931.

WM. P. JAMES,
United States District Judge.

[Endorsed]: Filed Jan. 15, 1931. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk. [65]

EXHIBIT "D"

This cause came on to be heard at this term on motion of the Plaintiff for the appointment of an Ancillary Receiver of the property owned by or under the control of or in the possession of Defendant and located within the jurisdiction of this Court, and upon reading the verified bill of complaint and verified answer in this cause, the bill of complaint and answer filed by the Plaintiff and Defendant in the District Court of the United States for the Southern District of California, Central Division, and the order of the District Court of the United States for the Southern District of California, Central Division, thereunder, made January 15, 1931, appointing William C. McDuffie receiver, and after hearing counsel and it appearing that said William C. McDuffie was appointed receiver upon the bill filed in and upon the order of said Court, of the properties belonging to, or under the control of, or in the possession of defendant, Richfield Oil Company of California, located within

the jurisdiction of said Court, and that said Receiver has filed therein the bond required by said original order.

It is ORDERED, ADJUDGED AND DECREED that this Court take ancillary jurisdiction and that William C. McDuffie be, and he is hereby, appointed Ancillary Receiver of the Richfield Oil Company of California, a Delaware corporation, the defendant above named, in and for the United States Judicial District of the Northern District of California, Southern Division, with all rights, powers, privileges and authorities conferred upon him by the order of the District Court of the United States, for the Southern District of California, Central Division, appointing the said William C. McDuffie as [66] Receiver, dated the 15th day of January, 1931, or by any subsequent order of said District Court of the United States, for the Southern District of California, Central Division, whether heretofore or hereafter made, and that said William C. McDuffie is hereby authorized to perform any and all acts and take any and all steps in the jurisdiction of this Court which the said Receiver has been or may be hereafter authorized to take as Receiver in the jurisdiction of the District Court of the United States, for the Southern District of California, Central Division.

It is further ORDERED, ADJUDGED AND DECREED that the said William C. McDuffie is authorized to act as Receiver herein without tak-

ing any further oath of office or executing any further bond.

It is further ORDERED, ADJUDGED AND DECREED that the defendant, its agents and employees, and all other persons, including creditors of the defendant, are hereby requested and commanded forthwith to deliver all property of every nature belonging to the defendant, or under its control, or in its possession, to the said Ancillary Receiver.

And it is further ORDERED, ADJUDGED AND DECREED that the said defendant and each and every of its agents and employees, and all creditors of the defendant, and all marshals, sheriffs, constables, and all deputies and servants, and all other officers, and, generally, all persons, firms and corporations whatsoever, are hereby enjoined from removing, transferring, disposing of, or attempting to remove, transfer or dispose of, or in any way interfere with any of the properties of the defendant, or from doing anything whatsoever of any nature to interfere with the possession and control of the said ancillary receiver of the property of said defendant.

And it is further ORDERED, ADJUDGED AND DECREED that all creditors, stockholders and all persons claiming or acting by, through or under them, and all sheriffs and marshals and other officers, agents, attorneys, proctors, representatives, servants and employees, and all other persons, as-

sociations and corporations, are hereby enjoined and restrained from instituting or prosecuting any action at law or suit or proceeding in equity or admiralty against the said defendant in any court of law or equity or admiralty, or before [67] any association, organization or arbitration board, or arbitration by referee or umpire or other court or tribunal, or otherwise, or from executing or issuing, or causing the execution or issuance, or the issuing out of any court of any writ, process, summons, attachment, subpoena, replevin or other proceeding, for the purpose of impounding or taking possession of or interfering with any property owned by or under the control of or in the possession of said defendant or of said Receiver; and all sheriffs, marshals and other officers and their deputies, representatives and servants, and all other persons, associations and corporations, are hereby enjoined and restrained from removing, transferring, disposing of or attempting in any way to remove, transfer, dispose of or in any way to interfere with any property, assets or effects in the possession of the defendant or of the Receiver, or owned by the defendant or under its control or in its possession or in the possession or control of any of its officers, agents or employees, and from doing any act or thing whatsoever to interfere with the possession and management by the Receiver of the property and assets of the defendant, or in any way to interfere with the Receiver in the discharge of his

duties, or in carrying on the business of said defendant, or to interfere in any manner with the administration and disposition in this suit of the property and affairs of the defendant.

It is further ORDERED, ADJUDGED AND DECREED that the said Ancillary Receiver shall have leave to apply to this Court for further orders and authority at any time hereafter as may be deemed by this Court proper and shall comply with all orders of the court of original jurisdiction.

It is further ORDERED, ADJUDGED AND DECREED that the said William C. McDuffie file in this court certified copies of all orders affecting the property of said defendant within this district made by the District Court of the United States, for the Southern District of California, Central Division, in said original cause for the information of the Court and all others interested.

Dated: January 15th, 1931.

FRANK H. KERRIGAN,
United States District Judge.

[Endorsed]: Filed Jan. 15, 1931. Walter B. Mailing, Clerk. By C. W. Calbreath, Deputy Clerk. [68]

[Endorsed]: Receipt of a copy of the within Ancillary Amended Bill of Complaint is hereby admitted this 1st day of December, 1931.

HELLER, EHRMAN, WHITE & McAULIFFE
Solictors for Defendant, Wells Fargo Bank & Union Trust Co.

[Endorsed]: Filed Dec. 1, 1931. [69]

[Title of Court and Cause.]

ANSWER AND DEFENSES OF DEFENDANT WELLS FARGO BANK & UNION TRUST CO. TO ANCILLARY AMENDED BILL OF COMPLAINT.

Comes now Wells Fargo Bank & Union Trust Co. defendant named in the ancillary amended bill of complaint of William C. McDuffie as ancillary receiver of Richfield Oil Company of California, a corporation, and answering said ancillary amended bill of complaint admits, denies and avers as follows, to-wit:

I.

Admits the allegations set forth in Paragraphs I, II and III, of said ancillary amended bill of complaint.

II.

Admits the taking and existence of the proceedings for the appointment of William C. McDuffie as Receiver of the property and [70] assets of Richfield Oil Company of California a corporation as set forth in Paragraph V of said ancillary amended bill of complaint, but denies the jurisdiction of the Court to make the appointment of said Receiver and denies that said William C. McDuffie ever since the 15th day of January, 1931, or from any time subsequent or prior thereto has been and/or now is the duly or otherwise properly appointed and/or qualified and/or acting Receiver for said Richfield Oil Company of California, a corporation, or of the assets or property thereof.

III.

Admits the taking and existence of the proceedings for the appointment of William C. McDuffie as Receiver of the property and assets of Richfield Oil Company of California, a corporation as set forth in Paragraph V of said ancillary amended bill of complaint, but denies that since the 20th day of January, 1931, or any time subsequent or prior thereto, said William C. McDuffie has been and/or now is the duly or otherwise properly appointed and/or qualified and/or acting ancillary receiver of or for said Richfield Oil Company of California, a corporation, within said Northern District of California, or elsewhere, or of the assets or property thereof.

IV.

Admits the allegations set forth in Paragraph VI of said ancillary amended bill of complaint with respect to the borrowing by said defendant Richfield Oil Company of California, a corporation, from said defendant Wells Fargo Bank & Union Trust Co., of the sum of $625,000, and admits that no agreement for collateral or as security for the repayment of said amount was executed at said time by said Richfield Oil Company of California, a corporation, to or for the benefit of said Wells Fargo Bank & Union Trust Co., a corporation, [71] but avers in this respect that subsequently, to-wit, in the months of October, November and December of 1930 and January of 1931, certain collateral security was deposited with said Wells Fargo Bank & Union Trust

Co. as more particularly hereinafter set forth, as security for certain indebtedness of said Richfield Oil Company of California, a corporation, including said indebtedness of $625,000 in said Paragraph VI of said ancillary amended bill of complaint referred to.

V.

Answering the allegations of Paragraph VII of said ancillary amended bill of complaint, said defendant denies that said agreement was as set forth in said Paragraph VII, and specifically denies that said agreement for the deposit of certain foreign drafts by Richfield Oil Company of California with said defendant, was only for the purpose of collection and/or was separate and/or distinct from any other financial transaction or transactions between said parties and denies that said foreign drafts were deposited only for collection and denies that each of said drafts No. 103005 and No. 103006-B were duly accepted for payment by the drawees thereof and admits that the same became due and payable on May 14, 1931, and admits that the draft last referred to in said Paragraph VII, in the sum of $23,607.50, matures for payment on August 19, 1931.

With respect to the agreement under which said drafts were deposited defendant avers that the only agreement between said Wells Fargo Bank & Union Trust Co. and said Richfield Oil Company of California, a corporation, with respect to the deposit of said drafts and the collection and disposition of the proceeds thereof, was as set forth in two certain written contracts each designated "Ac-

ceptance Agreement", duly executed by said Richfield Oil Company of California, a corporation, and addressed to Wells [72] Fargo Bank & Union Trust Co. prior to the receipt or acceptance of said drafts, said Acceptance Agreements being dated respectively October 4th and November 28th, 1930, and being for the establishment of credits in favor of Richfield Oil Company of California, a corporation, in the amounts respectively of $150,000 and $5000; that true copies of said Acceptance Agreements. being the sole contracts between said Richfield Oil Company of California, a corporation and said Wells Fargo Bank & Union Trust Co. with respect to the deposit of said drafts, and the collection thereof and the disposition of the proceeds thereof, are hereto attached and expressly made a part hereof, said Acceptance Agreement dated October 4, 1930 being designated and marked Exhibit "A" and said Acceptance Agreement dated November 28, 1930, being designated and marked Exhibit "B".

VI.

Defendant denies that in the months of October and November 1930, or either thereof or at any time, said Richfield Oil Company of California a corporation, and/or said Wells Fargo Bank & Union Trust Co., a corporation, made or entered into any agreement with respect to drafts drawn on said Wells Fargo Bank & Union Trust Co. by said Richfield Oil Company of California, except only said Acceptance Agreements exhibits "A" and

"B", and denies that said Richfield Oil Company of California and/or said Wells Fargo Bank & Union Trust Co. made or entered into any agreement at any time relating to foreign or other drafts and/or banker's acceptances other than said Acceptance Agreements exhibits "A" and "B", and denies that any agreement was entered into whereby said banker's acceptances in the amount of $155,000 or in any amount, were to be based upon drafts or any thereof, of Richfield Oil Company of California, a corporation, drawn upon responsible foreign customers of said Richfield Oil Company of California for shipment of [73] goods and/or commodities and/or that said drafts were to be slightly greater in amount, or of a maturity shorter than said Banker's Acceptances and in this respect defendant avers that the only agreements with respect to Banker's Acceptances and/or said drafts, are Acceptance Agreements exhibits "A" and "B", wherein and whereby it is agreed that all drafts drawn by Richfield Oil Company of California, a corporation, upon its foreign customers, were to be applied in repayment of said Banker's Acceptances and/or other indebtedness or liability of said Richfield Oil Company of California, a corporation, to said Wells Fargo Bank & Union Trust Co., without any restriction upon the maturity of said drafts and/or the amount thereof and/or the proceeds thereof.

Defendant denies that pursuant to any agreement as set forth in paragraph VIII of said

amended ancillary bill of complaint any drafts were deposited with Wells Fargo Bank & Union Trust Co. or that said drafts Nos. 103004 or 103006B or any other drafts referred to in said paragraph VIII or at all, were deposited pursuant to any such agreement and in this respect defendant avers that any and all drafts deposited with defendant by said Richfield Oil Company of California, including said drafts Nos. 103004 or 103006B were deposited pursuant to said Acceptance Agreements Exhibits "A" and "B", as were likewise other and additional drafts drawn by said Richfield Oil Company of California upon its foreign customers.

Defendant admits that said sum aggregating $155,000 borrowed from said Wells Fargo Bank & Union Trust Co. by said Richfield Oil Company of California pursuant to said Acceptance Agreements Exhibits "A" and "B" was repaid. Defendant denies that any agreement was entered into wherein or whereby it was understood and/or agreed between Richfield Oil Company of California and/or Wells Fargo Bank & Union Trust Co. that the proceeds of the sale [74] of said or any goods covered by said foreign or other drafts should be reserved for and/or applied to the liquidation of said Banker's Acceptances before the due date thereof, or that any surplus arising therefrom should be held separate or apart from any or all other financial obligations or transactions of Richfield Oil Company of California, a corporation, to or with said Wells Fargo Bank & Union Trust Co.

a corporation, and in this respect defendant avers that the agreement of said Richfield Oil Company of California, a corporation, and said Wells Fargo Bank & Union Trust Co., with respect to the deposit of said foreign drafts and the application of the proceeds thereof and the proceeds of the sale of goods covered by said foreign drafts, is set forth in said Acceptance Agreements Exhibits "A" and "B", wherein and whereby it is provided that said drafts and the proceeds thereof and the proceeds of the sale of goods covered thereby, shall be security not alone for the repayment of said moneys borrowed upon said so-called Banker's Acceptances, but likewise as security for any and all other liability of said Richfield Oil Company of California to said Wells Fargo Bank & Union Trust Co. whether existing at the time of the deposit of said drafts or thereafter contracted, all as set forth in said Acceptance Agreements Exhibits "A" and "B".

VII.

Answering the allegations of Paragraph IX of said amended ancillary bill of complaint, defendant having no information or belief sufficient to enable it to answer and placing its denial upon that ground, denies that Richfield Oil Company of California had borrowed, with or without security or otherwise, from and/or was indebted to certain or any commercial or other banks in various parts of the United States or elsewhere, in amount exceeding ten million dollars, or in any amount, except

only the sum of approximately [75] $625,000 borrowed from said Wells Fargo Bank & Union Trust Co. as herein elsewhere set forth, and admits that said sum of $625,000 was so borrowed from said Wells Fargo Bank & Union Trust Co. but denies that said sum was borrowed without security, averring in this respect that although no security was expressly provided for said loan at the time of the making thereof, security was subsequently thereafter obtained, to-wit, the security of said foreign drafts, the proceeds thereof and the proceeds of the sale of the goods covered thereby as set forth in said Acceptance Agreements Exhibits "A" and "B."

Having no information or belief sufficient to enable it to answer and placing its denial upon that ground, defendant denies that in each or any of said banks said Richfield Oil Company of California maintained a commercial deposit or other account and/or deposited moneys therein and/or the proceeds of collections of checks and/or drafts and/or issued its checks and/or drafts thereon in the ordinary course of business, but admits that said Richfield Oil Company of California maintained a commercial deposit account with said Wells Fargo Bank & Union Trust Co.

Having no information or belief sufficient to enable it to answer and placing its denial upon that ground, defendant denies that at or about the time of the appointment and/or qualification of William C. McDuffie as Receiver of said Richfield Oil Com-

pany of California, a corporation, it was agreed by and/or between said Receiver and/or each or any of said banks, or said Wells Fargo Bank & Union Trust Co. that each or any of said banks would transfer such or any balance held in the name of Richfield Oil Company of California, a corporation, to that of William C. McDuffie as its Receiver, or would carry on and/or conduct such commercial accounts in the ordinary course of business and/or would not exercise any claim of [76] banker's lien upon said balances and/or collections for the benefit of creditors of said Richfield Oil Company of California, a corporation and/or of others interested in said corporation or at all, until the termination of such receivership or at all, and in this respect defendant avers that the only agreement ever entered into between said Wells Fargo Bank & Union Trust Co. and said receiver with respect to the account of said Richfield Oil Company of California with said defendant Bank, and the conduct or transfer thereof, arose out of an exchange of telegrams as follows:

On or about the 16th day of January, 1931, said Receiver telegraphed to said Wells Fargo Bank & Union Trust Co. as follows:

> "As receiver I am ordered by Federal Court to take over all assets including cash in banks stop While you have undoubted right of offset, such right if exercised will seriously cripple receivers operations. It is necessary therefore to request that all banks restore to receiver full cash balance stop Please therefore transfer such

> funds to a new account on your books in my name as receiver evidence of my authority and signature cards will follow by mail stop Local banks have indicated they will acquiesce in this program."

and in reply thereto said defendant Wells Fargo Bank & Union Trust Co. telegraphed to said Receiver as follows:

> "Replying telegram we are willing to restore into your name as Receiver Richfield's balance in checking account provided we are notified by you that all company's banks have taken similar action (Stop) We are holding certain collections as security for acceptances Please understand that we continue to reserve all our rights for bankers lien against these collections."

No other agreement except said agreement resulting from the exchange of said telegrams hereinbefore referred to was entered into between said Receiver and said Wells Fargo Bank & Union Trust Co. with reference to the bank balance of said Richfield Oil Company of California and/or the proceeds of any collections or drafts or from the sale of goods represented by drafts and in and by said [77] agreement said defendant Wells Fargo Bank & Union Trust Co. expressly reserved its right to apply the proceeds of said drafts and/or the proceeds of the sale of goods represented by said drafts, as against any indebtedness owing from

said Richfield Oil Company of California to said Wells Fargo Bank & Union Trust Co., and further in this respect defendant avers that any agreement to not apply the bank deposit or other assets in its possession as against the indebtedness of said Richfield Oil Company of California, was made gratuitously and without consideration and is of no legal force or effect.

Defendant admits that it notified said Richfield Oil Company of California on or about the 9th day of May, 1931, that it proposed to apply the proceeds of the collection of the drafts in paragraph VII of said amended ancillary bill of complaint mentioned, to the pre-existing obligation of said Richfield Oil Company of California in the amount of $625,000 more or less, but denies that said notification was in violation of any agreement with said Richfield Oil Company of California and/or with other banks, or of any agreement, and denies that said pre-existing obligation was unsecured, averring in this respect that the same was secured by collateral including drafts and proceeds of drafts in the possession or under the control of said Wells Fargo Bank & Union Trust Co., and in this respect defendant further avers that said Receiver of Richfield Oil Company of California was aware throughout the entire time of his receivership and for several months prior to May 9, 1931, that said Wells Fargo Bank & Union Trust Co. reserved the right and intended to apply the proceeds of said drafts and/or of the sale of the goods represented thereby, in reduction

of said Richfield Oil Company of California's pre-existing indebtedness to it.

Defendant denies that in the application of said drafts [78] against said indebtedness any preference was created in favor of said Wells Fargo Bank & Union Trust Co. over that of other banks and/or creditors of Richfield Oil Company of California similarly or otherwise situated, and denies that any such preference would be accomplished thereby or that any such preference or any preference was or would be accomplished thereby to the detriment of said estate or otherwise or to the detriment of persons interested therein or otherwise.

Defendant denies that the application of said drafts gave defendant an unjust or inequitable advantage over other banks and/or creditors and denies that by said application of said proceeds an unjust or inequitable advantage would be taken over other banks and/or creditors of said Richfield Oil Company of California, and having no information or belief sufficient to enable it to answer and placing its denial upon that ground, denies that all of said defendant banks or any thereof have fully performed and/or complied with the terms and conditions of any agreement with said Receiver, and denies that any such agreement was entered into.

Defendant denies that said Receiver in the interests of any other creditors of Richfield Oil Company of California, or acting under or pursuant to the order of the court, demanded the restoration

or repayment to his account of said moneys so sought to be applied by said Wells Fargo Bank & Union Trust Co. as aforesaid.

Defendant admits that said Receiver requested the restoration and repayment of said moneys which this defendant applied or stated that it would apply against said unsecured indebtedness, but denies that said Receiver in making such demand was acting in the interest of the other creditors of said Richfield Oil Company of California, or at all.

Defendant admits that said Wells Fargo Bank & Union Trust [79] Co. has refused and still refuses to restore the proceeds of said drafts except as otherwise herein set forth.

VIII.

Answering the allegations of paragraph X of said amended ancillary bill of complaint, defendant denies that there was any agreement with said William C. McDuffie, Receiver, and/or with any other banks, for the crediting of the balances of Richfield Oil Company of California to said Receiver's account; admits that certain of the balances in the commercial account of said Richfield Oil Company of California with said Wells Fargo Bank & Union Trust Co. were transferred gratuitously and without consideration to said Receiver; admits that said Wells Fargo Bank & Union Trust Co. continued to make collections of checks and drafts and to make deposits of the proceeds

thereof in the ordinary course of business, but denies that the collection of any foreign drafts, except as elsewhere herein set forth, were applied to the account of said Receiver and admits that on or about the 9th day of May, 1931, said Wells Fargo Bank & Union Trust Co., in pursuance of its previous notification and advice to said Receiver, advised him that it intended to apply to the partial liquidation of its unsecured obligation in excess of $625,000, the proceeds of three drafts and other drafts described in paragraph VII of said amended ancillary bill of complaint, then in course of collection, and the proceeds of other foreign drafts held or deposited with it pursuant to said Acceptance Agreements Exhibits "A" and "B", but denies that said action was in violation of any agreement and denies that there was any agreement between said Wells Fargo Bank & Union Trust Co. and said William C. McDuffie, Receiver, with reference to said drafts, the proceeds thereof and/or the proceeds of the sale of goods represented by said drafts, except only Exhibits "A" and "B".

Defendant denies that on or about the 13th day of May, 1931, [80] or at any time, said Receiver revoked or withdrew the power and authority of Wells Fargo Bank & Union Trust Co. to collect and/or receive the proceeds of said drafts in paragraph X of said amended ancillary bill of complaint mentioned and denies that said Receiver

notified said Wells Fargo Bank & Union Trust Co. and/or its agent and/or correspondent at Calcutta, India, or elsewhere that the authority of said Wells Fargo Bank & Union Trust Co. and/or of its correspondent and/or agent to collect and/or receive the proceeds of two certain drafts maturing May 14, 1931, or of any drafts, in the amount of $119,850.76, or in any amount, was revoked and/or withdrawn; admits that said Wells Fargo Bank & Union Trust Co. did present and collect said drafts and did apply the proceeds thereof in liquidation in part of said unsecured indebtedness in excess of $625,000 hereinbefore mentioned, but denies that said action was without right or authority, denies that said action was in violation of the terms of any agreement, denies that there was any agreement with respect thereto and denies that said action was without right, warrant or authority.

IX.

With respect to the allegations set forth in Paragraph XI of said amended ancillary bill of complaint, defendant admits that defendant Wells Fargo Bank & Union Trust Co. filed, on or about the 28th day of March, 1931, its Proof of Claim with said William C. McDuffie as Receiver for said Richfield Oil Company of California, a corporation, averring in this respect, however, that said claim was filed without consenting to the jurisdiction of said William C. McDuffie as said purported receiver for

said Richfield Oil Company of California, a corporation, and without waiving the rights of said Wells Fargo Bank & Union Trust Co. to attack the jurisdiction of said Receiver to require the filing of claims or to [81] act upon or decide the same, or to liquidate or continue the business of said Richfield Oil Company of California, a corporation, or to retain and dispose of the assets and properties thereof.

Defendant admits that said claim embodied the language purportedly quoted therefrom in Paragraph XI of said amended ancillary bill of complaint and further admits that no note or other evidence of indebtedness, other than a copy of said note dated July 12, 1931, in the principal sum of $625,000, was attached to said Proof of Claim. Further in this respect said defendant avers that at the time of the preparation of said Claim the information therefore was compiled and delivered to said defendant by its Note Department; that said Note Department was then and now is a separate Department of said Wells Fargo Bank & Union Trust Co.; that the Foreign Department of said Wells Fargo Bank & Union Trust Co. was likewise then and now is a separate Department of said Wells Fargo Bank & Union Trust Co.; that said Note Department, at the time of filing said Claim, kept and still does keep, records of loans from and indebtedness to said Wells Fargo Bank & Union Trust Co. evidenced by promissory notes, and had not at that time and has now, no records in its Department of collateral or other security deposited

with said Foreign Department or with any of the other separate Departments of said Wells Fargo Bank & Union Trust Co.; that therefore, through inadvertence and lack of knowledge by said Note Department, said claim stated that there were no offsets or counterclaims to the indebtedness set forth in said claim, and no claim to preference in payment and further stated that no securities were held by said Wells Fargo Bank & Union Trust Co. for said indebtedness whereas at said time the truth and the facts were and now are, that there were and now are certain collateral securities in the possession of Wells Fargo Bank & Union Trust Co., and particularly of its [82] said Foreign Department, as security for all of the said indebtedness of said Richfield Oil Company of California, a corporation, to said Wells Fargo Bank & Union Trust Co., being more particularly, the drafts and/or proceeds thereof, referred to in said ancillary bill of complaint and more specifically hereinafter referred to.

That prior to the filing of said claim, to-wit: on or about the 16th day of January, 1931, in response to a telegraphic request from said William C. McDuffie to said Wells Fargo Bank & Union Trust Co. requesting the restoration of said cash balances upon which said Wells Fargo Bank & Union Trust Co. had prior thereto exercised its banker's lien, said Wells Fargo Bank & Union Trust Co. duly informed said Receiver by telegram and otherwise that it would restore and did restore to said Wil-

liam C. McDuffie as Receiver, the balance in the checking account at Wells Fargo Bank & Union Trust Co. of said Richfield Oil Company of California, expressly stating, however, that said Wells Fargo Bank & Union Trust Co. was holding certain collections, to-wit: said drafts, as security for acceptances and advising said Receiver that said Wells Fargo Bank & Union Trust Co. continued to reserve all of its rights under said agreements, and/or its banker's lien against said collections as security for all indebtedness of said Richfield Oil Company of California to said Wells Fargo Bank & Union Trust Co. Said information was transmitted to said Receiver on or about the 16th day of January, 1931, and at all times subsequent thereto said Wells Fargo Bank & Union Trust Co. has maintained and so advised said Receiver, that it claimed said drafts and/or the proceeds thereof, as security for the indebtedness of said Richfield Oil Company of California, to it, except only that at the request of said Receiver said Wells Fargo Bank & Union Trust Co. subsequently remitted the sum of $1956.52 on account of partial collection received upon a certain [83] draft known as the Bueno & Co. draft hereinafter more specifically referred to.

Upon the discovery of the inadvertence of its Note Department with respect to the preparation of said claim hereinbefore referred to, said Wells Fargo Bank & Union Trust Co. forthwith, to-wit: on or about the 19th day of May, 1931, prepared a

written amendment to claim, a true copy of which Amendment to Claim is attached hereto and marked Exhibit "C" and by reference made a part hereof; there was attached to and made a part of said Amendment to Claim as Exhibits "A", "B" and "C" thereof respectively, a true copy of the Proof of Claim of Wells Fargo Bank & Union Trust Co. hereinbefore referred to and true copies of said Acceptance Agreements Exhibits "A" and "B" to this Answer; said Amendment to Claim including said exhibits thereto, was duly presented to said William C. McDuffie, as Receiver of said Richfield Oil Company of California, on May 20, 1931, but said William C. McDuffie refused to accept the same. Thereupon, forthwith, said Wells Fargo Bank & Union Trust Co. prepared and filed in the District Court of the United States in and for the Southern District of California, Central Division, in the proceedings in which said receivership of said Richfield Oil Company of California was pending, its verified Petition for an order to show cause why the Receiver should not be compelled to receive said Amendment to Claim. Subsequently, after negotiations between the Attorneys for said Wells Fargo Bank & Union Trust Co. and the Attorneys for said Receiver, it was stipulated that said Amendment to Claim, including the exhibits thereto, should be filed, without prejudice to the Receiver's right to subsequently reject the same, or to make any objections to its contents, and the time and manner of filing thereof, and thereafter, on to-wit: the

29th day of May, 1931, it was duly and regularly ordered by the Honorable [84] William P. James, United States District Judge for the United States District Court, Southern District of California, Central Division, in the proceedings there pending, that said Wells Fargo Bank & Union Trust Co. be authorized to file its Amendment to Proof of Claim, including the exhibits thereto, and that said William C. McDuffie as Receiver be instructed to receive and accept the same for filing. A true copy of said order is attached hereto, marked Exhibit "D" and by express reference made a part hereof.

X.

With respect to the allegations set forth in Paragraph XII of said amended ancillary bill of complaint said defendant admits that said drafts dated October 8, 1930, and referred to more specifically in Paragraph VII of said amended ancillary bill of complaint, became due and payable by the drawee thereof on the 14th day of May, 1931, and admits that said drafts were at said time by the drawee thereof, paid to Nederlandsche Handel Maatschappij, at Calcutta, India, but in this respect avers that payment thereof to defendant Wells Fargo Bank & Union Trust Co. was not made until the 10th day of June, 1931, at which time the net proceeds of said drafts, to-wit: the sum of $119,512.54, were received in San Francisco, California, by defendant Wells Fargo Bank & Union Trust Co.

and applied against the outstanding indebtedness of said Richfield Oil Company of California to it.

XI.

Answering the allegations of Paragraph XIII of said amended ancillary bill of complaint said defendant admits that it claims a lien upon each of said drafts referred to in Paragraph VII of said amended ancillary bill of complaint but denies that said claim is without right in law or in equity and admits that it claims a lien [85] upon said drafts and the proceeds thereof and the right to apply the proceeds thereof as and when received by it from its correspondent bank, toward the payment of the unsecured indebtedness owing to it from said Richfield Oil Company of California, as evidenced by said promissory note dated July 12, 1930, in the sum of $625,000, plus accruing interest, and in this respect said defendant avers that said drafts and each of them, and the proceeds thereof, were received by it pursuant to said Acceptance Agreements Exhibits "A" and "B", and under the provisions of the laws of the State of California with reference to banker's liens, as security not alone for the sum of $155,000 advanced pursuant to said Acceptance Agreements, but as security for any and all indebtedness of said Richfield Oil Company of California to said defendant bank, whether existing at the time of the deposit of said drafts or the execution of said Agreements or at any time thereafter existing.

XII.

Answering the allegations of Paragraph XIV of said amended ancillary bill of complaint said defendant admits that it claims a lien upon the drafts set forth in said Paragraph XIV and the proceeds thereof, but denies that said claim to a lien is without right in law or in equity and in this respect defendant avers as follows:

Defendant denies that said drafts, or any thereof, were deposited by said Richfield Oil Company of California for collection in the ordinary course of business, but in this respect avers that said drafts in Paragraph XIV set forth and all thereof, were deposited with said Wells Fargo Bank & Union Trust Co. in accordance with and pursuant to the terms, conditions and covenants of Acceptance Agreements Exhibits "A" and "B".

With respect to the second draft referred to in said [86] Paragraph XIV of said amended ancillary bill of complaint, to-wit: the draft drawn by Richfield Oil Company of California, a corporation, on Bueno & Co., in the sum of $2,441.00, defendant avers that at the request of William C. McDuffie as Receiver of Richfield Oil Company of California, a corporation, it transmitted to him the sum of $1,956.54 on account of the proceeds of said draft received by it, with the express understanding and agreement, however, that the transmittal of said proceeds was for the convenience of said William C. McDuffie and without waiver of any of the rights of said defendant Wells Fargo Bank & Union Trust

Co., pursuant to said Acceptance Agreements and/or under its banker's lien, with respect to the balance of said draft, or of any other of said drafts, or the proceeds thereof.

Further answering the allegations of Paragraph XIV of said amended ancillary bill of complaint, said defendant admits that it has already applied toward the payment of said indebtedness owing it from said Richfield Oil Company of California, evidenced by said promissory note dated July 12, 1930, denying however, that said indebtedness was unsecured, part of the proceeds of said last mentioned drafts and intends, unless precluded by the order of this Court, to apply the remainder of the proceeds of said drafts as and when received by it upon the collection thereof, to the payment of said indebtedness. In this respect defendant avers that it has received and applied the proceeds of said drafts and of the drafts mentioned in Paragraph VII of said amended ancillary bill of complaint, pursuant to the terms, conditions and covenants of said Acceptance Agreements Exhibits "A" and "B", and pursuant to its banker's lien, in the following amounts and as follows: [87]

Drawee	Amount	Date Paid	Amount Received
Bueno & Co.	$2441.00	May 11, 1391 (Bal)	$ 469.06
Ricardo Velasques	1219.00	May 19, 1931	1245.11
Birla Bros. (Drafts Nos. 103005 and 103006-B)	119,850.75	June 10, 1931	119,512.54
Total amount received and credited against said indebtedness of Richfield Oil Co. of California hereinbefore referred to			$121,226.71

XIII.

Answering the allegations of Paragraph XV of said amended ancillary bill of complaint, said defendant denies that said Receiver was at any time authorized forthwith or at any time to take and/or have complete, exclusive or any control or possession or custody of all or any of the property and/or assets owned by or under the control of or in the possession of said Richfield Oil Company of California, a corporation, real, personal or mixed, or of any kind or character or description, within the Ninth Judicial District or elsewhere, and denies that all persons and/or firms and/or corporations were ever validly or properly, or with due or any proper authorization, forthwith or at any time, ordered to deliver to said Receiver all or any of the property or assets of said Richfield Oil Company of California, a corporation, and in that respect defendant expressly avers that said District Court in and for the Southern District of California, Central Division, was without jurisdiction or authority to make said order marked Exhibit "A" to complainant's amended ancillary bill of complaint, or any valid or proper order appointing said William C. McDuffie or any other person Receiver for said Richfield Oil Company of California, a corporation, and denies that said District Court of the United States in and for the Northern District of California, Southern [88] Division, had jurisdiction or authority to make said order marked Exhibit "B" to complainant's amended ancillary

bill of complaint, or any valid or proper order appointing said William C. McDuffie or any other person ancillary receiver for said Richfield Oil Company of California, a corporation.

Further answering the allegations of Paragraph XV of said amended ancillary bill of complaint, defendant denies that the payment by said defendant Wells Fargo Bank & Union Trust Co. to said William C. McDuffie as Receiver for said Richfield Oil Company of California, a corporation, or otherwise, of the proceeds or any thereof, of all or any of said drafts, is imperative or essential for the continued or other operations of the business of said Richfield Oil Company of California by said Receiver pursuant to the order or orders of said Court or Courts, or pursuant to any order or any authority, and in this respect defendant further avers that said Receiver has no authority or jurisdiction to continue the business of said corporation.

Defendant denies that the Receiver is the true owner or the owner, or has any claim to the proceeds of said drafts or any thereof or to said drafts and denies that said Wells Fargo Bank & Union Trust Co. has no right or title or interest in or to the same or any thereof or any part thereof and in this respect defendant expressly avers that upon the deposit of said drafts by it pursuant to said two Acceptance Agreements Exhibits "A" and "B" said Wells Fargo Bank & Union Trust Co. held said drafts and each thereof and the proceeds thereof, as security for any and all indebtedness of said Richfield Oil Company of California, a cor-

poration, to it, including said indebtedness evidenced by said promissory note dated July 12, 1930 in the amount of $625,000 with accruing interest thereon, and that irrespective of said Agreements Exhibits "A" and "B", said defendant held said drafts and/or proceeds thereof at [89] all times subsequent to the maturity of said indebtedness of said Richfield Oil Company of California, a corporation, to said Wells Fargo Bank & Union Trust Co., to-wit: the 10th day of September, 1930, pursuant to the banker's lien of said defendant as created by the laws and statutes of the State of California with the right to apply said drafts and/or the proceeds thereof against said matured indebtedness and that upon the collection of said drafts said defendant, Wells Fargo Bank & Union Trust Co., had and has the right, pursuant to said Agreements and pursuant to its said banker's lien, to apply the proceeds thereof on account of the matured and unpaid indebtedness of said Richfield Oil Company of California, a corporation, to it.

And for a FURTHER, SEPARATE AND SECOND DEFENSE to said amended ancillary bill of complaint, said defendant Wells Fargo Bank & Union Trust Co., admits, denies and avers as follows, to-wit:

I.

Said defendant avers that the above entitled Court is without jurisdiction to determine the question herein presented as to the ownership of the drafts referred to in said amended ancillary bill of complaint and/or the proceeds thereof.

II.

Said defendant avers that the Order of the District Court of the United States for the Southern District of California, Central Division, purportedly appointing said William C. McDuffie as Receiver of said Richfield Oil Company of California, a corporation, and/or of the assets and properties thereof, was improper and unauthorized and made without proper jurisdiction of said Court in said proceedings and furthermore, that the Order of the District [90] Court of the United States for the Northern District of California, Southern Division, purportedly appointing said William C. McDuffie as ancillary Receiver of said Richfield Oil Company of California, a corporation, and/or of the assets and properties thereof, was improper and unauthorized and made without proper jurisdiction of said Court in said proceedings.

III.

Said defendant avers further that said Receiver has no right or authority, nor any jurisdiction to liquidate the affairs of said Richfield Oil Company of California, a corporation, or to continue the business of said corporation, nor has said Receiver any right or authority to fix the time for the presentation of claims against said Richfield Oil Company of California, a corporation, or to pass upon the validity of said claims, or to pay the same, or to preclude the filing of said claims or of amend-

ments to claims, and specifically that said Receiver had and has no jurisdiction to require said Wells Fargo Bank & Union Trust Co. to file its said claim in said receivership proceedings, or to deny to said Wells Fargo Bank & Union Trust Co. the right to file an amendment to said claim or to deny to said Wells Fargo Bank & Union Trust Co. its right to claim said drafts and/or the proceeds thereof as security for said indebtedness of said Richfield Oil Company of California, a corporation, to defendant Wells Fargo Bank & Union Trust Co. on account of the alleged delay in presenting the claim thereto or on account of the alleged waiver by the filing of said defendant's claim against said Richfield Oil Company of California, a corporation, or for any reason.

In this respect defendant further avers that any order of the above entitled Court or of the United States District Court for the Northern District of California, Southern Division, purporting [91] to give to said Receiver, or to said ancillary Receiver, the right to fix a time for the presentation of claims, and/or the right to pass upon and/or reject said claims, and/or to determine the validity or invalidity thereof and/or to determine what security if any said defendant or other claimants may or might have as securing the indebtedness of said Richfield Oil Company of California, a corporation, to it or them, was and is without jurisdiction and made and given in excess of and without the jurisdiction of said Courts or either thereof.

WHEREFORE, said defendant, Wells Fargo Bank & Union Trust Co., prays:

I.

That complainant take nothing by his said amended ancillary bill of complaint.

II.

That the relief sought by complainant in his said amended ancillary bill of complaint be denied.

III.

That said Wells Fargo Bank & Union Trust Co. be authorized and permitted to retain said drafts and/or the proceeds thereof and to apply the same against the indebtedness of said Richfield Oil Company of California, a corporation, to it, or that said complainant be found to be without any right, title or interest in or claim to said drafts and/or the proceeds thereof, and that said Wells Fargo Bank & Union Trust Co. be found to be the owner of said drafts and/or the proceeds thereof, for the purpose of securing the indebtedness of said Richfield Oil Company of California, a corporation, to it, and for the purpose of applying the proceeds of said drafts, as and when received by it, against the unpaid and matured indebtedness of said Richfield Oil Company of California, a corporation, to it. [92]

IV.

That said defendant Wells Fargo Bank & Union Trust Co. recover from said complainant its costs of suit herein incurred.

V.

That defendant Wells Fargo Bank & Union Trust Co. have such other and further relief as to this court shall seem meet.

HELLER, EHRMAN, WHITE AND McAULIFFE,
Solicitors for Defendant, Wells Fargo Bank & Union Trust Co. [93]

State of California,
City and County of San Francisco—ss.

Julian Eisenbach being duly sworn, deposes and says: That he is an officer, to-wit: Vice-President of Wells Fargo Bank & Union Trust Co., a corporation, and as such is authorized to and does make this verification for and on behalf of said corporation; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on information or belief and as to those matters he believes the same to be true

JULIAN EISENBACH.

Subscribed and sworn to before me this 14th day of January, 1932.

(Seal) JENNIE DAGGETT,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires Feb. 29, 1932. [94]

EXHIBIT "A"

ACCEPTANCE AGREEMENT

(Arising out of importation or exportation of goods)

To WELLS FARGO BANK & UNION TRUST CO., SAN FRANCISCO.

Dear Sirs:

We hand you herewith, for acceptance, the following drafts:

Number	Date	Covering following		Amount
	Oct. 6	Merchandise		$150,000
	Marks	Numbers	Description	

Payable in San Francisco to the order Ourselves

It is agreed that the proceeds of the above will be used for financing the actual goods under consideration, and the proceeds of the sale of the goods shall be applied to liquidate the acceptance.

In consideration of your acceptance of the said draft or drafts the undersigned, jointly and severally, agree to pay you at the time of the acceptance a commission of ..... per cent, and further agree to pay you the amount of the said draft or drafts at your office one day before maturity. We waive all liability on your part in case the goods are not according to contract, either in description, quality, or quantity, or in any other respect. All bills of lading, warehouse receipts and

other documents of title and all money and goods held by you as security for any such acceptance shall also be held by you as security for any other liability from us to you whether then existing or thereafter contracted and bind ourselves to furnish you prior to ..... with shipping documents covering this merchandise or with exchange arising out of the transaction being financed by the credit.

We further agree to give and furnish you on demand additional security or to make payment on account in amounts and character satisfactory to you. If we fail to comply with any such demand or in case of our insolvency, assignment, bankruptcy, or failure in business, all our obligations and liabilities direct or indirect to you whether arising hereunder or otherwise shall forthwith become due and payable without demand or notice. All goods represented by bills of lading, warehouse receipts or other documents of title, pledged with you as security for your acceptances hereunder, shall be at all times covered by us by certificates of insurance under open policies to your order or by specific policies payable to you as your interest may appear, to an amount sufficient to cover your advances or obligations hereunder, and you are to have specific claim and lien on such policies and their proceeds to the amount of your interest in the goods thereby insured. [95]

The undersigned hereby consents to any renewal and extension of time of payment of any draft,

drafts or other indebtedness that may be granted by you, and do also consent that the securities set forth in said acceptance agreement may be exchanged or surrendered from time to time without notice to or further assent from the undersigned, and that the undersigned will remain bound by this guarantee, notwithstanding such changes, guarantees, renewals and extensions.

Upon our failure to comply with any of the terms hereof or upon the non-payment by us of this or any other liability to you when due or at any other time or times thereafter then in such case all obligations and liabilities direct and contingent from us to you whether arising hereunder or otherwise shall at your election forthwith become due and payable without demand or notice and we hereby give to you full power and authority to sell, assign, transfer and deliver the whole or any part of the securities, bills of lading or documents of title or the goods represented thereby or of any securities substituted therefor or added thereto at any broker's board or at any public or private sale with or without notice or advertisement at your option and do further agree that you may become a purchaser at such sale if at any broker's board or at public auction and hold the property or security so purchased as your own property absolutely free from any claim of or in the right of ourselves. In case of any sale or other disposition of the whole or any part of the security or property aforesaid, you may apply the proceeds of such sale or disposi-

tion to the payment of all legal or other costs and expenses of collection, sale and delivery and of all expenses incurred in protecting the security or other property or the value thereof, as hereinafter provided and may apply the residue of such proceeds to the payment of this or of any then existing liability of ours to you whether then payable or not, returning the overplus to us and in case of any deficiency we agree to pay to you the amount thereof forthwith with legal interest. You may also upon any such non-payment apply the balances of all our deposit accounts in the same way that you are authorized to apply the proceeds of any sale of the security or property hereunder.

You may pay taxes, charges, assessments, liens or insurance premiums upon the security or any part of it, or otherwise protect the value thereof or of the property represented thereby, and may charge against us all expenditures so incurred; but you shall be under no duty or liability with respect to the protection or collection of any security held hereunder or of any income thereon, nor with respect to the protection of preservation of any rights pertaining thereto, beyond the safe custody of such security. We hereby agree that if, in your opinion, the market value of the security hereby or hereafter pledged to secure this obligation, after deducting all charges against the same is at any time less than the amount thereof and ..... per centum thereof added thereto we will upon demand, deposit satisfactory additional security so that the

market value of the security pledged hereunder, after deducting all charges, shall always equal the amount of this obligation plus such additional percentage.

We hereby agree to indemnify you against any liability or responsibility for the correctness, validity, or genuineness of any documents or any signatures or endorsements thereon representing goods which you hold, purchase or sell under this engagement, or for the description, quantity, quality or value of the property declared therein, or of any insurance certificates or policies, and against any general loss or charges or other expenses incurred accruing with respect to such goods through delay in transmission of shipping documents or through any other cause, which charges and other expenses we agree to pay. We further agree that no delay on [96] your part in exercising any right hereunder shall operate as a waiver of such rights or of any right under this obligation.

RICHFIELD OIL COMPANY
OF CALIFORNIA,
By R. W. McKEE,
By W. E. HART,
Treasurer.

Dated: October 4, 1930. [37]

EXHIBIT "B"

ACCEPTANCE AGREEMENT

(Arising out of importation or exportation of goods)

To WELLS FARGO BANK & UNION TRUST CO., SAN FRANCISCO.

Dear Sirs:

We hand you herewith, for acceptance, the following drafts:

Number	Date	Covering following	Amount
	Nov. 24	Merchandise	$5000.00
	Marks	Numbers Description	

Payable in San Francisco to the order of Ourselves

It is agreed that the proceeds of the above will be used for financing the actual goods under consideration, and the proceeds of the sale of the goods shall be applied to liquidate the acceptance.

In consideration of your acceptance of the said draft or drafts the undersigned, jointly and severally, agree to pay you at the time of the acceptance a commission of ..... per cent, and further agree to pay you the amount of the said draft or drafts at your office one day before maturity. We waive all liability on your part in case the goods are not according to contract, either in description, quality, or quantity, or in any other respect. All bills of lading, warehouse receipts and

other documents of title and all money and goods held by you as security for any such acceptance shall also be held by you as security for any other liability from us to you whether then existing or thereafter contracted and bind ourselves to furnish you prior to ..... with shipping documents covering this merchandise or with exchange arising out of the transaction being financed by the credit.

We further agree to give and furnish you on demand additional security or to make payment on account in amounts and character satisfactory to you. If we fail to comply with any such demand or in case of our insolvency, assignment, bankruptcy, or failure in business, all our obligations and liabilities direct or indirect to you whether arising hereunder or otherwise shall forthwith become due and payable without demand or notice. All goods represented by bills of lading, warehouse receipts or other documents of title, pledged with you as security for your acceptances hereunder, shall be at all times covered by us by certificates of insurance under open policies to your order or by specific policies payable to you as your interest may appear, to an amount sufficient to cover your advances or obligations hereunder, and you are to have specific claim and lien on such policies and their proceeds to the amount of your interest in the goods thereby insured. [98]

The undersigned hereby consents to any renewal

and extension of time of payment of any draft, drafts or other indebtedness that may be granted by you, and do also consent that the securities set forth in said acceptance agreement may be exchanged or surrendered from time to time without notice to or further assent from the undersigned, and that the undersigned will remain bound by this guarantee, notwithstanding such changes, guarantees, renewals and extensions.

Upon our failure to comply with any of the terms hereof or upon the non-payment by us of this or any other liability to you when due or at any other time or times thereafter then in such case all obligations and liabilities direct and contingent from us to you whether arising hereunder or otherwise shall at your election forthwith become due and payable without demand or notice and we hereby give to you full power and authority to sell, assign, transfer and deliver the whole or any part of the securities, bills of lading or documents of title or the goods represented thereby or of any securities substituted therefor or added thereto at any broker's board or at any public or private sale with or without notice or advertisement at your option and do further agree that you may become a purchaser at such sale if at any broker's board or at public auction and hold the property or security so purchased as your own property absolutely free from any claim of or in the right of ourselves. In case of any sale or other disposition of the whole

or any part of the security or property aforesaid, you may apply the proceeds of such sale or disposition to the payment of all legal or other costs and expenses of collection, sale and delivery and of all expenses incurred in protecting the security or other property or the value thereof, as hereinafter provided and may apply the residue of such proceeds to the payment of this or of any then existing liability of ours to you whether then payable or not, returning the overplus to us and in case of any deficiency we agree to pay to you the amount thereof forthwith with legal interest. You may also upon any such non-payment apply the balances of all our deposit accounts in the same way that you are authorized to apply the proceeds of any sale of the security or property hereunder.

You may pay taxes, charges, assessments, liens or insurance premiums upon the security or any part of it, or otherwise protect the value thereof or of the property represented thereby, and may charge against us all expenditures so incurred; but you shall be under no duty or liability with respect to the protection or collection of any security held hereunder or of any income thereon, nor with respect to the protection of preservation of any rights pertaining thereto, beyond the safe custody of such security. We hereby agree that if, in your opinion, the market value of the security hereby or hereafter pledged to secure this obligation, after deducting all charges against the same is at any time

less than the amount thereof and ..... per centum thereof added thereto we will upon demand, deposit satisfactory additional security so that the market value of the security pledged hereunder, after deducting all charges, shall always equal the amount of this obligation plus such additional percentage.

We hereby agree to indemnify you against any liability or responsibility for the correctness, validity, or genuineness of any documents or any signatures or endorsements thereon representing goods which you hold, purchase or sell under this engagement, or for the description, quantity, quality or value of the property declared therein, or of any insurance certificates or policies, and against any general loss or charges or other expenses incurred accruing with respect to such goods through delay in transmission of shipping documents or through any other cause, which charges and other expenses we agree to pay. We further agree that no delay on [99] your part in exercising any right hereunder shall operate as a waiver of such rights or of any right under this obligation.

RICHFIELD OIL COMPANY
OF CALIFORNIA,
By J. F. WALLACE,
Vice President
By B. B. WILSON.
Assistant Secretary

Dated: November 28, 1930. [100]

EXHIBIT "C"

AMENDMENT TO PROOF OF CLAIM.

State of California,
City and County of San Francisco—ss.

On the 19th day of May, 1931, came F. I. Raymond, of and in said State and City and County, and made oath and says he is authorized to make this proof.

That affiant is Vice-President and Cashier of Wells Fargo Bank & Union Trust Co., a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City and County of San Francisco, claimant herein, and verified this amendment to proof of claim for the following reasons;

That claimant has no Treasurer and that of all its officers the duties of affiant correspond most nearly to those of Treasurer;

That as set forth in the verified claim of claimant filed with the Receiver herein on the 30th day of March, 1931, a copy of which claim is hereunto annexed, marked Exhibit "A" [101] and made a part hereof, Richfield Oil Company of California, a corporation was, on the 15th day of January, 1931, and at the time of the appointment of the Receiver herein, and still is, justly and truly indebted to said claimant in the sum of $636,189.95;

That the basis of said indebtedness is for moneys loaned by claimant to said Richfield Oil Company

of California at its special instance and request, evidenced by a promissory note dated July 12, 1930, a copy of which said promissory note is attached to said verified claim hereinbefore referred to, as Exhibit "A" thereof, together with interest thereon from November 30, 1930, at the rate of six per cent per annum and accruing interest, and also for certain moneys paid by claimant at the special instance and request of said Richfield Oil Company of California for and in behalf of said Richfield Oil Company of California, all as more particularly set forth in said verified claim, Exhibit "A", to which reference is hereby made for the particulars of said claim;

That at the time of the preparation of said claim the information therefor was compiled and delivered to affiant by the Note Department of said claimant, Wells Fargo Bank & Union Trust Co.; said Note Department was then and now is, a separate Department of said Wells Fargo Bank & Union Trust Co.; the Foreign Department likewise was then and now is a separate Department of said Claimant, Wells Fargo Bank & Union Trust Co.; said Note Department at that time kept and does still keep records of loans from and indebtedness to said Wells Fargo Bank & Union Trust Co., evidenced by promissory notes, and had not at that time and has now no records in its Department of collateral or other security deposited with said Foreign Department or with [102] any of the other separate

Departments of said Wells Fargo Bank & Union Trust Co.;

That therefore, through inadvertence and lack of knowledge by said Note Department said claim, Exhibit "A", stated that there were no offsets or counterclaims to the debt set forth in said claim and no claim to preference in payment from the receivership estate was made, and further stated that no securities were held by said claimant for said indebtedness whereas at said time the truth and the facts were and now are, that unknown to said Note Department there were and now are certain collateral securities in the possession of said Foreign Department as security for all of the said indebtedness of said Richfield Oil Company of California to said Wells Fargo Bank & Union Trust Co., claimant herein, more particularly as follows, to-wit:

> On or about the 14th day of October, 1930, and prior to the appointment of the Receiver herein, said Richfield Oil Company of California, a corporation delivered to claimant, Wells Fargo Bank & Union Trust Co., and particularly to its said Foreign Department, a certain Acceptance Agreement in the amount of $150,000.00, a copy of which said Agreement is annexed hereto, marked Exhibit "B" and by reference made a part hereof.
>
> On or about the 28th day of November, 1930, and prior to the appointment of the Receiver herein, said Richfield Oil Company of Cali-

fornia, a corporation, delivered to claimant, Wells Fargo Bank & Union Trust Co., and particularly to its Foreign Department, a certain Acceptance Agreement in the amount of $5,000.00, a copy [103] of which said Agreement is attached hereto, marked Exhibit "C" and by reference made a part hereof.

Pursuant to the terms of said Agreements hereinbefore referred to and prior to the appointment of a Receiver herein, said Richfield Oil Company, a corporation, delivered to claimant, Wells Fargo Bank & Union Trust Co., and particularly to its Foreign Department, certain drafts drawn by it upon the following persons and for the following amounts and upon the following terms:

RICARDO VELASQUES, Twelve Hundred Nineteen Dollars ($1219.00), maturing April 15, 1931;

BUENO & CO. Twenty-four Hundred Forty-one Dollars ($2441.00), Fifteen Hundred Dollars ($1500.00) of which matured on January 10, 1931;

SOCIEDAD AUTOMAVILIANIA COLOMBIANA, Seven Hundred Seventy-nine and 10/100 ($779.10) Dollars, which matured January 25, 1931, but which maturity date was extended by said Richfield Oil Company of California to February 13, 1931;

ITO BERGONZALI, Fifty-three and Forty-five one-hundredths Dollars ($53.45), maturing January 15, 1931;

BIRLA BROS., Fifty-five Thousand Nine Hundred and 75/100 Dollars ($55,900.75), maturing May 14, 1931;

BIRLA BROS., Sixty-three Thousand Nine Hundred Fifty Dollars ($63,950.00), maturing May 14, 1931;

BIRLA BROS., Twenty-three Thousand Six Hundred Seven and 50/100 Dollars ($23,607.50), maturing August 19, 1931.

Pursuant to the terms of said Agreements, Exhibits "B" and "C", and particularly the provisions thereof providing that the security deposited thereunder should be held by said Bank not alone as security for the Acceptances referred to in said Agreements, but also as security for any other liability of said Richfield Oil Company of California to claimant, Wells Fargo Bank & Union Trust Co., whether then existing or thereafter [104] contracted, and pursuant likewise to the laws and statutes of the State of California with respect to the banker's lien of claimant and particularly Section 3054 of the Civil Code, claimant asserts a lien upon said drafts and upon all moneys heretofore paid by, or in behalf of the drawees named in said drafts (except as hereinafter set forth) and upon any and all moneys which may hereafter be paid by, or in behalf of the drawees of said drafts and claim is hereby made by claimant against the receivership estate for the balance of said indebtedness to claimant remaining unpaid after crediting the moneys

last hereinabove referred to, paid or to be paid by the drawees of said drafts:

That there has been paid on account of said drafts:

The principal amount of the draft of Ricardo Velasquez, to-wit: the sum of $1219.00, together with $27.63 interest due thereon, against which there was a collection charge of $1.52, making the net sum of $1245.11 collected.

The principal amount of the draft of Bueno & Co. to-wit: the sum of $2441.00, against which there was a collection charge of $15.42, making the net sum of $2425.58 collected.

Of said principal sum of $2441.00 claimant has remitted to the Receiver of Richfield Oil Company of California the sum of $1965.52 (being the sum of $1970.00 collected on account of said draft, less collection charges of $13.48) pursuant to the request of said Receiver hereinafter set forth. Said sum of $1245.11 collected on the draft of said Ricardo Velasquez and said sum of $469.06 (being the sum of $471.00, the balance on account of the draft of Bueno & Co., less the sum of $1.94 collection charges) have been claimed and applied by claimant pursuant to said Agreements marked Exhibits "B" and "C" and pursuant to said banker's lien hereinbefore referred to and said moneys are held as a credit against the indebtedness of said Richfield Oil Company of California to claimant. [105]

With respect to said drafts hereinbefore referred to, said Exhibits "B" and "C" and said banker's lien, claimant sets forth the following further facts:

Upon receiving notice on or about the 15th day of January, 1931, that Wm. C. McDuffie had been appointed as Receiver of Richfield Oil Company of California claimant, in exercise of its banker's lien, applied the balance of moneys on deposit or on hand of Richfield Oil Company of California in the possession of claimant, on account of the then past due indebtedness of said Richfield Oil Company of California to claimant;

On or about the 16th day of January, 1931, said Receiver telegraphed to claimant as follows:

> "As receiver I am ordered by Federal Court to take over all assets including cash in banks stop While you have undoubted right of offset, such right if exercised will seriously cripple receiver operations. It is necessary therefore to request that all banks restore to receiver full cash balance stop Please therefore transfer such funds to a new account on your books in my name as receiver evidence of my authority and signature cards will follow by mail stop Local banks have indicated they will acquiesce in this program."

In response thereto claimant replied to said Receiver as follows:

> "Replying telegram we are willing to restore into your name as Receiver Richfield's balance

in checking account provided we are notified by you that all company's banks have taken similar action Stop We are holding certain collections as security for acceptance Please understand that we continue to reserve all our rights for bankers lien against these collections."

By said last named telegram claimant expressly reserved its right to exercise its lien against said collections held as security for acceptances, including said drafts hereinbefore referred to. Said reservation has at no time subsequently been waived or withdrawn by claimant; except that claimant subsequently remitted to the Receiver the sum of $1956.54 on account of the Bueno & Co. draft hereinbefore referred to. [106]

No part of the security heretofore referred to (except said sum of $1956.54 on account of said Bueno & Co. draft remitted to said Receiver as aforesaid) held by claimant is in any manner waived and with the exception of the security heretofore referred to no other security is held by said claimant for said indebtedness;

That as hereinbefore mentioned affiant and the Note Department of claimant at the time of the execution and filing of claimant's claim, had no knowledge of said securities so held by the Foreign Department of claimant and through inadvertence,

therefore, failed to include said securities in claimant's statement of claim.

F. I. RAYMOND,
Affiant
WELLS FARGO BANK & UNION TRUST CO. a corporation,
Claimant.

Subscribed and sworn to before me this 19th day of May, 1931.

[Seal] AGNES M. COLE,
Notary Public in and for the City and County of San Francisco, State of California. [107]

EXHIBT "A"

(To Amendment to Proof of Claim)

In the District Court of the United States, in and for the Southern District of California, Central Division.

In Equity

No. S—125—J

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation,

Complainant,

vs.

RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation,

Defendant.

PROOF OF CLAIM

State of California,
City and County of San Francisco—ss.

On the 28th day of March, 1931, came F. I. RAYMOND, of and in the said State and County, and made oath and says he is authorized to make this proof.

The Affiant is Vice President and Cashier of Wells Fargo Bank & Union Trust Co., a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City and County of San Francisco, claimant herein, and verified this Proof of Claim for the following reasons:

That claimant has no Treasurer and of all its officers the duties of Affiant correspond most nearly to those of Treasurer;

That the defendant Richfield Oil Company of California, a corporation, was on the 15th day of January, 1931, and at the time of the appointment of the Receiver herein and still is, justly [108] and truly indebted to said claimant in the sum of Six Hundred Thirty-six Thousand One Hundred Eighty-nine and 95/100 Dollars ($636,189.95);

The basis of said debt is as follows:

Moneys loaned by claimant to said Richfield Oil Company of California at its special instance and request, evidenced by promissory note dated July 12, 1930, copy of which said promissory note is attached hereto marked Exhibit "A" and made a part hereof;

Interest on said promissory note from November 30, 1930, to March 16, 1931, at the rate of six per cent (6%) per annum, and accruing interest until paid;

Moneys paid by claimant at the special instance and request of said Richfield Oil Company of California for attorneys fees and preparation of indenture on behalf of creditor banks in the sum of $91.28, together with interest thereon from the 11th day of February, 1931, to the 16th day of March, 1931, at the rate of six per cent (6%) per annum, and accruing interest until paid;

Moneys paid by claimant at the special instance and request of said Richfield Oil Company of California for legal expenses in the sum of $56.39, together with interest thereon from the 4th day of March, 1931, to the 16th day of March, 1931, at the rate of six per cent (6%) per annum, and accruing interest until paid;

That there are no offsets or counterclaims to said debt; no notes or other evidences of indebtedness have been taken or received except those of which copies are hereto attached; no Judgment has been rendered for such indebtedness or any part thereof; and no claim to preference in payment from the receivership estate is made;

That no securities are held by said claimant for said indebtedness.

F. I. RAYMOND,
Affiant.

WELLS FARGO BANK & UNION TRUST CO., a corporation,
Claimant.

Subscribed and sworn to before me this 28th day of March, 1931.

[Seal] DAISY CROTHERS WILSON,
Notary Public in and for the City and County of San Francisco, State of California. [109]

EXHIBIT "A"

(To Proof of Claim)

No. D47304

$625,000. San Francisco, Calif., July 12, 1930

Ninety days after date, for value received, RICHFIELD OIL COMPANY OF CALIFORNIA a Corporation, promises to pay WELLS FARGO BANK & UNION TRUST CO., 4 Montgomery St., San Francisco, SIX HUNDRED TWENTY-FIVE THOUSAND Dollars, in United States Gold Coin of the present standard of weight and fineness, with interest thereon in like gold coin from date hereof until paid, at the rate of 6 per cent per annum, payable monthly, and if not so paid to become part of the principal and bear the like rate of interest, and in the event of commencement of suit to enforce payment of this note, such attorney's fees as the Court may adjudge reasonable.

RICHFIELD OIL COMPANY OF CALIFORNIA,

By R. W. McKEE, Vice President.

By G. P. LYONS, Assistant Secretary. [110]

EXHIBIT "D"

ORDER.

Upon the reading and filing of the petition of Wells Fargo Bank & Union Trust Co. for an order authorizing the petitioner to file herein its

Amendment to Proof of Claim and instructing Wm. C. McDuffie, Receiver herein, to receive and accept the same and upon the reading and filing of the stipulation of counsel in reference to the matters in said petition mentioned, and good cause appearing therefor,

IT IS HEREBY ORDERED that Wells Fargo Bank & Union Trust Co. is hereby authorized to file its Amendment to its verified Proof of Claim herein and Wm. C. McDuffie, Receiver herein, is hereby instructed to receive and accept the same for filing.

IT IS HEREBY FURTHER ORDERED that the receipt and acceptance for filing of said Amendment to Proof of Claim by the said Wm. C. McDuffie, as Receiver herein, shall be without prejudice to the rejection thereof and/or the making of any objection by said Receiver or any other person to its contents or the time and manner of the filing thereof, and without prejudice to the rights of the said Wm. C. McDuffie, as such Receiver, or Richfield Oil Company of California in the cause now pending in [111] the United States District Court, Northern District of California, Southern Division, entitled, "The Republic Supply Company of California, a corporation, complainant, vs. Richfield Oil Company of California, a corporation, defendant—Wm. C. McDuffie, Ancillary Receiver for Richfield Oil Company of California, vs. Wells Fargo Bank & Union Trust Co.," being cause in Equity No. 2758-K in the files of the Clerk of said Court.

Done in open Court at Los Angeles, California, this 29 day of May, 1931.

WILLIAM P. JAMES,
United States District Judge.

[Endorsed]: Receipt of a copy of the within Answer and Defenses of Defendant is hereby admitted this 15th day of January, 1932.

GREGORY, HUNT & MELVIN,
Attorneys for Wm. C. McDuffie as Ancillary Receiver, etc.

[Endorsed]: Filed Jan. 15, 1932. [112]

[Title of Court and Cause.]

NORCROSS, District Judge:

Complainant Receiver's bill of complaint prays for relief requiring defendant Wells Fargo Bank & Union Trust Co. to pay over to him as receiver the proceeds of certain foreign drafts collected by said defendant, totaling the sum of $144,758.79, together with interest and costs. To the bill of complaint defendant bank sets up the right to, and the assertion of, a bankers lien upon the proceeds of said drafts, also the right to the same under the terms of certain acceptance agreements.

On July 12, 1930, Richfield Oil Company gave its note to defendant in the principal sum of $625,000.00, payable ninety days after date, with interest at 6% per annum. The note covered a prior note

then due, and provided for an additional [113] loan which was placed on deposit to the credit of the Oil Company in its general checking account.

In August or September, 1930, Mr. Richard L. Hall came to San Francisco with a view of taking up with the Foreign Department of defendant bank the matter of the bank handling Richfield collections from foreign consignees and extending credit thereon. Hall testified that, although he had the title of Export Manager of Richfield Oil Company, he was not directly employed by that company. His relationship with the company, he stated "was to form and organize an export department for Richfield under joint account with the Richfield Oil", under which arrangement he had been acting for three or four years and until his "resignation" September 1, 1931. The financial interest of Hall in the matter appears to be that he was negotiating sales in foreign territory for the Richfield Company upon a commission basis. At this first meeting with officials of defendant bank, Mr. Hall was accompanied by Homer E. Pope, an official in the Foreign Department of the Richfield Company whose particular duty was to watch foreign collections. Hall had conferences with Mr. Gilstrap and Mr. Hellman of the Foreign Department of defendant bank, and thereafter with Mr. Lipman, President of the bank. During a conference with Gilstrap, the latter suggested the use of acceptances rather than the discount of drafts on customers; that "prime paper

not exceeding ninety days could be handled" at a saving. Hall testified that upon that occasion he asked Gilstrap "to remember that any transactions were to be considered separate from other transactions of the Richfield Company—the entire transactions, monetary, the collection of drafts for * * * the Foreign Department." Concerning a conversation with President Lipman, Hall testified:

> "He (Lipman) said that he would give a further line of credit based on foreign drafts to $150,000 or $200,000 or [114] thereabouts and see how it would work out. I then made it particularly strong to Mr. Lipman as to my position as manager of the Foreign Department, that I would continue to give my very careful attention to the drafts of the Foreign Department for two reasons; that I had a personal interest in the collections of the Department, and that I wanted it considered to be a separate transaction from any of the obligations or any transactions other than those of the Foreign Department—Richfield obligations and mine. Lipman then said, 'That is good' or 'That is excellent.' "

Hall also quoted Lipman as saying:

> "I have accommodated Richfield a great deal, but on an acceptance basis, based on your foreign collections, Mr. Hall, we will extend further credit under the acceptance form."

Mr. Lipman testified concerning the conversation with Hall:

> "The conversation was quite short, and it seems to me that as the conversation came to an end he said something to this effect; That he represented the Foreign Department and not the general treasury relations of the company and he did not want the two mixed up. He wanted them kept separately."

Mr. Frederick J. Hellman, Vice President of defendant bank, and in charge of its Foreign Department, accompanied Hall to the office of President Lipman. Concerning the conversation with Lipman, Hellman testified:

> "As I remember it, we then stood up and were going out the door, and Mr. Hall said to Mr. Lipman, 'Mr. Lipman, I want it understood'—no not that. He said 'You must realize that I am not in the financial end of the business; that I am only the manager of the foreign department, and I will have to get the consent of my superiors to put this credit through.' He further said that he knew we were giving them a credit of $625,000, and that if this acceptance credit was going to interfere with the loan downstairs, he knew they would not consent to it, and he wanted the acceptance credits separate from the loan downstairs."

On cross-examination, to the question:

> "Q. He wanted to have the acceptances considered separate from the $625,000—didn't he make that statement?—Hellman replied:
>
> "A. That is the essence of the statement if it was not the statement."

Hellman further testified:

> "I believe Mr. Lipman said to Mr. Hall, 'We will advance you $150,000, $200,000, $250,000 on your foreign collections.' He made it quite clear—he said to Mr. Hall that this credit was to remain in force until it was cancelled by either side, that we did not know whether it would work out or not; we did [115] not know what kind of foreign collections they were handling, and if it did not work out we reserved the right to cancel the credit."

On or just prior to October 1st, Hall telephoned to Gilstrap advising that Richfield had decided to avail itself of the acceptance credit and requesting that the necessary forms for executions be sent to Los Angeles. This request was complied with by letter of transmittal dated October 1, 1930, reading:

> "In accordance with your request made by telephone today, we enclose forms of acceptances and acceptance agreements. We have completed one specimen acceptance and one specimen acceptance agreement for your guidance. We understood that our Mr. Eisenbach

has discussed the use of these acceptances with your treasurer Mr. R. W. McKee. If you require any further information please do not hesitate to call upon us."

On October 6, 1930, Mr. Hall and Mr. Pope returned to San Francisco, bringing with them the acceptance agreement executed by the Vice President and Treasurer of Richfield Company of date October 4th, and also fourteen signed acceptances in the amount of $150,000, and delivered the same to Mr. Gilstrap. The acceptance agreement as executed, so far as material, reads:

"ACCEPTANCE AGREEMENT"
(arising out of importation or exportation of goods).

"To WELLS FARGO BANK & UNION TRUST CO.—SAN FRANCISCO.

Dear Sirs:

We hand you herewith for acceptance, the following drafts: Number ..... Date Oct. 6, covering following merchandise..... ..... Amount $150,000.00 payable in San Francisco to the order of ourselves.

"It is agreed that the proceeds of the above will be used for financing the actual goods under consideration, and the proceeds of the sale of the goods shall be applied to liquidate the acceptance.

"In consideration of your acceptance of the said draft or drafts the undersigned, * * * agree to pay you * * * the amount of the said

> draft or drafts at your office one day before maturity. * * * All bills of lading, warehouse receipts and other documents of title and all money and goods held by you as security for any such acceptance shall also be held by you as security for any other liability from us to you whether then existing or [116] thereafter contracted and bind ourselves to furnish you prior to ..... with shipping documents covering this merchandise or with exchange arising out of the transaction being financed by the credit. * * *
>
> "* * * We further agree that no delay on your part in exercising any right hereunder shall operate as a waiver of such rights or of any right under this obligation."

The matter of the blanks in the acceptance agreement came up for discussion at this time. The testimony of Mr. Gilstrap which does not appear to be controverted, was:

> "That the acceptance agreement did not stipulate * * * the exact amount for which each acceptance was drawn because we did not know, nor did they, * * * in what amount the acceptances would be issued, and when they would be issued. * * * Likewise, no mention could be made * * * of the collections which were the security for this particular credit, because, * * * neither they nor we knew exactly what collections would later be sent us. * * * I explained to Mr. Pope that this one agreement was expected to be a blanket one."

At the said time the defendant bank issued its receipt to the Richfield Company for "signed and blank indorsed acceptance forms on this bank, all dated October 6th; four at $5,000.00 each, eight at $10,000.00 each and two at $25,000.00 each," a total of $150,000.00.

Hall and Pope returned to Los Angeles on the night of October 6th, and on the following night Hall returned to San Francisco, bringing with him drafts and documents covering a shipment to Birla Bros., and three letters of date October 7th. All these letters and documents were delivered by Hall to Gilstrap on the morning of October 8th. One of these letters was from G. P. Lyons, Comptroller, and reads:

> "We are sending by Mr. Hall, documents coveirng a shipment to Birla Brothers, Ltd., Calcutta, India. Will you please release against shipment $115,000.00 worth of acceptances made payable at 90 days sight."

One of the other two letters reads:

> "We are enclosing the following enumerated documents covering shipment going forward to Calcutta, India per the M/S 'SILVER HAZEL':
>
> 1. Our draft #103004 amounting to $63,-950.00 drawn at sight on Birla Brothers, Ltd.
> 2. Our draft #103005 amounting to $63, 950.00 drawn at 180 [117] days sight on Birla Brothers, Ltd.

3. Our invoice #930112 in the amount of $127,900.00.
4. Insurance policy in triplicate.
5. Three originals Bill of Lading.

Provided these documents are found to be in order, please forward them to your correspondent bank at Calcutta, requesting them to notify you immediately by wire of non-acceptance or non-payment of Draft at maturity."

(Signed) RICHFIELD OIL COMPANY,
B. D. Blanchard,
Assistant Manager,
Foreign Department."

The other letter with the same address, signature and concluding paragraph reads:

"We are enclosing the following documents covering shipments going forward to Calcutta and Bombay, per the M/S 'SILVER RAY':

1. Our Draft #103006-A amounting to $55,-900.76 drawn at sight on Birla Brothers, Ltd. at Calcutta.
2. Our draft #103006-B amounting to $55,-900.75 drawn at 180 days sight D/A on Birla Brothers, Ltd. at Calcutta." * * *

(Note: Items 3 to 12 refer to invoices, insurance policies and bills of lading.)

Of the drafts receipted for on October 6th, the bank, as of date October 8, 1930, accepted nine thereof in the aggregate amount of $115,000.00; on October 15th, it accepted one in the sum of $5,000.00; on October 21st, one in the sum of $10,-

000.00, and on November 28th, three in the amount of $20,000.00. On November 24, 1930, an "Acceptance Agreement" in similar form to that of date October 4, 1930, was executed by the Richfield Company in the amount of $5,000.00. An additional ninety day sight draft was dated and accepted as of that date.

A letter of date October 21, 1930, from defendant bank to the Richfield Company, referring to the sight draft as of that date, states: "We have ear-marked same against your collection No. 46483 on La Paz, Bolivia," which was a sight draft on the [118] consignee for the amount of $11,031.14.

From October 8th, 1930, to January 15th, 1931, inclusive in addition to the four drafts on Birla Bros. Ltd., heretofore mentioned, the Richfield Company deposited wtih the defendant bank drafts on foreign consignees in the aggregate amount of $101,458.10. This amount is inclusive of two drafts on Birla Bros. Ltd., Calcutta, deposited with the bank January 8, 1931; one at sight for $11,107.50 and the other at 180 days sight for $23,607.50. The total of such drafts on other consignees was $64,221.55.

On December 16, 1930, a letter from the defendant bank to the Richfield Company acknowledges receipt from its Calcutta correspondent of the company's two sight drafts on Birla Bros. Ltd. in the amount of $119,850.76, and advises the Company that the amount, less charges and commissions, has been applied "in anticipation of maturing acceptances."

A letter from the bank of date January 3, 1931, advises Richfield Company of the collection of draft for $11,031.14, "and net proceeds applied in anticipation of acceptances."

On January 15, 1931, plaintiff was appointed and qualified as receiver for the Richfield Oil Company. At the time of his appointment the unsecured indebtedness of the Richfield Company to various banks throughout the country was approximately ten million dollars.

On the day following his appointment the receiver held a conference with representatives of a number of creditor banks at Los Angeles. The receiver testified concerning this conference:

> "I told the bankers at this meeting that the conditions were such that if they felt it was necessary to seize these balances I, as receiver, should not carry on and that the receivership must be immediately terminated and it would be necessary to go immediately into bankruptcy.
>
> "I told them that it was not only necessary that I have the balances restored, but that I have their assurance that the [119] normal flow of business would be allowed to go on. Collections were coming in, of course. If they merely restored my balances it would be obvious that it would be impossible to carry on the business if collections were seized. I asked them if they would not restore to me all funds that might be available. I particularly brought to their attention that, after all, the receivership was

created to protect the state and to carry it on, and without funds it was utterly impossible to carry on the estate."

At the conclusion of the meeting a telegram was prepared by some of the bankers present in cooperation with the receiver to be sent by the receiver to creditor banks not represented at the meeting. The telegram reads:

"As receiver I am ordered by Federal Court to take over all assets including cash in banks. While you have undoubted right to offset, such right if asserted will seriously cripple receiver's operations. It is necessary therefore to request that all banks restore to receiver full cash balances. Please therefore transfer such funds to a new account on your books in my name as receiver. Evidence of my authority and signature cards will follow by mail. Local banks have indicated they will acquiesce in this program."

Mr. Edward J. Nolan, an executive of the Bank of America, the largest bank creditor, and who was one of those present at the meeting with the receiver, at the suggestion of the receiver called Mr. Eisenbach of defendant bank by telephone. Concerning this phone conversation Nolan testified, "I tried to pass it to Mr. Eisenbach just what took place at the meeting."

To the telegram of the receiver Mr. Eisenbach replied the same day by wire, reading:

"Replying telegram we are willing to restore into your name as receiver Richfield's

balance in checking account provided we are notified by you that all company's banks have taken similar action. We are holding certain collections as security for acceptances please understand that we continue to reserve all our rights for bankers lien against these collections."

On January 17, 1931, Eisenbach wrote to the receiver, in which letter attention was called to the fact that no reply had been received "to our telegram of January 16", and after quoting the telegram, said:

"Pending notification by you that all of the company's [120] banks have restored to the receiver the company's cash balances, we have taken no action towards such restoration on our part."

To this letter the receiver replied by telegram of date January 22nd, as follows:

"All banks have now expressed their willingness to replace Richfield Oil Company's offset balances of January 15th to the credit of receiver. Will therefore greatly appreciate your at once transferring such sums to my credit advising me the amount by wire collect. Wish express appreciation your cooperation as these funds will be of great assistance."

To the receiver's telegram, Eisenbach, by telegram, replied:

"Answering wire have today placed to your

> credit Richfield Oil Companys offset balance of January fifteenth amount forty thousand eight hundred seventy four dollars seven cents."

Letters from the bank to the receiver of dates January 26, 28, February 2, 3, 4, 13, acknowledge payment of several drafts on foreign consignees and the application of the proceeds in anticipation of acceptances in the amount of $25,000.00 due February 26, 1931.

A letter from the defendant bank to the receiver of date February 26, 1931, acknowledges receipt of payments on three certain drafts on foreign consignees totaling $7,760.81, also that partial payment on another draft in the sum of $1,500.00 has been received. The letter then proceeds to say:

> "From the four months above mentioned, the sum of $1499.70 has been taken to meet the balance due on acceptances maturing today. The remainder of the proceeds we are holding in accordance with the notice given you by our wire of January 16."

On March 3, a letter to the bank by Mr. Pagen for the receiver, states:

> "Referring to your letter of February 26 * * * and referring to your telegram of January 16, I beg to inform you that all banks transferred the total amount of deposit to the credit of Richfield Oil Company of California on January 15th, 1931, to the credit of Wil-

liam C. McDuffie, receiver. I will therefore appreciate it if you will kindly credit the remainder of the proceeds as mentioned above, $7749.58, to the credit of Richfield Oil Company of California, William C. McDuffie, Receiver, and advise as soon as this transfer has been made." [121]

In reply to the letter last above quoted Mr. Gilstrap, in a letter of date March 5th, wrote:

> "In accordance with your request, we are crediting the account of William C. McDuffie, Receiver, Richfield Oil Company of California, with the sum of $7749.58.
>
> "We are also crediting this account with $11,082.51, representing proceeds of collection No. 13106 of the Richfield Oil Company of California, particulars as per memorandum attached."

On March 5, 1931, the unpaid balance of the total amount of the bank's acceptances, aggregating $155,000.00 was paid.

Of drafts on foreign consignees deposited by Richfield Company with defendant bank subsequent to the acceptance agreement of October 6, 1930, and prior to the receivership, there was collected by the defendant bank the amount due on six thereof totaling $5,278.99, the net proceeds, of which $5,255.86 was credited to the account of the Richfield Company.

Of ten drafts on foreign consignees deposited by Richfield Company between October 11, 1930 and January 15, 1931, both dates inclusive, in the aggregate amount of $26,011.81, and which were collected by the bank between March 5 and April 22, 1931, both dates inclusive, the net proceeds thereof, $25,996.08, were credited to the account of the Receiver.

The drafts on foreign consignees upon which a bankers lien or security under acceptance agreements is claimed on the net proceeds thereof, are four in number. On two drafts on Birla Bros. Ltd., deposited October 7, 1930, paid June 16, 1931, net amount $119,512.54; draft on the same consignee deposited January 8th and paid September 10, 1931, net amount $23,532.08; Ricardo Volozquez, deposited December 27, 1930, paid May 18, 1931, net amount $1,245.11, and balance of draft on Bueno y Cia paid May 11, 1931, net amount $469.06, a total of $144,758.79. Of the last mentioned draft, Bueno y Cia, the original draft was for $2441.00 delivered to the bank on October 11, 1930, upon which $1500.00 was paid February 24, 1931, and [122] applied on bank acceptances; a second installment in the amount of $470.00 was paid April 7 and credited to the account of the receiver.

On March 30, 1931, defendant bank filed with the receiver verified proof of claim in the amount, as of that date, $636,189.95, which in the main covers the principal of the note of July 12, 1930, with ac-

crued interest. The claim as filed concluded with the statement: "That no securities are held by said claimant for said indebtedness."

On May 29, 1931, defendant bank, in pursuance of an order of court, filed an amendment to its proof of claim. The order of court provided that the filing of such amendment shall be without prejudice to the * * * making of any objection * * * to its contents * * * and without prejudice * * * in the cause now pending"—this cause.

The affidavit of F. I. Raymond, Vice President and Cashier of defendant bank, being a part of the amended claim, among other matters, avers:

> "That at the time of the preparation of said claim the information therefor was compiled and delivered to affiant by the Note Department of said claimant, * * * separate department; the Foreign Department was then and now is a separate department of claimant * * *; said Note Department * * * had not at the time and has now no records * * * of collateral or other security deposited with the said Foreign Department or with any of the other separate departments * * *;
>
> "That therefore, through inadvertence and lack of knowledge by said Note Department said claim * * * stated that there were no offsets or counterclaims to the debt set forth in said claim * * * and further stated that no securities were held by said claimant for said indebtedness whereas at said time the truth

and the facts were and now are * * * certain collateral securities in the possession of said Foreign Department as security for all of the said indebtedness * * * more particulary as follows:"

Here follows a reference to the two acceptance agreements of date October 4th and November 24, 1930, for $150,000.00 and $5,000.00 respectively, the drafts upon which bankers liens are claimed; the telegram received from the receiver on January 16, 1931, and the reply thereto of same date and copies of the same [123] are attached as exhibits to the amended claim.

It is the contention of complainant receiver that the defendant bank is without right to assert a bankers lien or other claim upon the proceeds of the drafts in question for the reason that it was agreed between the bank and Richfield Company that collections on foreign drafts should be deemed to be separate and apart from other business and financial obligations of the Richfield Company with the bank, and for the further reason that by its telegram of January 16, 1931, it waived any such asserted lien.

It is defendant's contention that the drafts, the proceeds of which are in quetsion as to whether the same may be applied upon the general indebtedness of Richfield Company, were deposited in pursuance of the acceptance agreement as security not alone for the acceptances issued thereunder, but likewise as expressed in such agreement, for "any

other liabilities," and that the written agreement may not be varied by an oral agreement to the effect that all foreign drafts should be kept "separate and apart" from other transactions, and that there has been no waiver of defendant's rights.

The acceptance agreement relied upon is not an instrument complete in itself. To determine what the actual agreement between the parties was resort must be had to other written instruments and correspondence, and their connection or relation to the agreement explained by parol.

There is no conflict in the testimony respecting the fact that when Mr. Hall and Mr. Pope called upon the representatives of the Foreign Department of the defendant bank the statement was made by Mr. Hall to the effect that foreign drafts were to be regarded separate and apart from the other financial transactions between the Richfield Company and the bank, and that this statement was later repeated at the conference between Hall and [124] President Lipman. While witnesses were not in accord respecting their recollections of certain details discussed at this first interview, there is, as stated, no conflict with respect to the statement made by Mr. Hall. It is not disputed that Mr. Gilstrap suggested the use of acceptances rather than the discount of drafts, and Mr. Hall quoted President Lipman as saying "We will extend further credit under the acceptance form." The testimony of witnesses for defendant, however, fails to disclose any direct statement to Mr. Hall that his

suggested condition could not or would not be carried out. That there was such an oral agreement is satisfactorily established. The terms of an executed written agreement cannot be varied by a prior or contemporaneous oral agreement. We are here, however, dealing with a contract which in its entirety was not reduced to writing. The acceptance agreements, in the form executed, by themselves are unintelligible; that is, it cannot be ascertained therefrom what drafts are referred to; what merchandise is covered thereby; what transactions are financed by the credit, or what exchange based thereon. As explained by Mr. Gilstrap, neither party knew in what amount or when the acceptances would be issued, and "likewise no mention could be made * * * of the collections which were the security for this particular credit." It is necessary to resort to the testimony to determine what drafts constituted the basis for acceptances issued. Not all drafts deposited with the bank could be or were so considered. So far as the issuance of acceptances was concerned it quite conclusively appears that, as stated by Mr. Gilstrap, they were to be based upon "prime paper not exceeding ninety days." In addition to the 180 day sight drafts, a number of other drafts were not considered available for acceptances. The question here involved is,—were such drafts security for acceptances which, primarily at [125] least, were based on other drafts, and more particularly, as expressed in the acceptance agreement, security "for any other

liability"? It is clear that the drafts which were not considered as a basis for acceptances, were subject to the oral agreement, and that they were not security fo rthe general indebtedness of the Richfield Company to the bank under the provisions of the acceptance agreements.

It is plaintiff's contention that under the oral agreement to keep separate and apart the foreign business from that of other business with the bank, all drafts on foreign consignees other than those used as a basis for acceptances were deposited for collection merely, and that such drafts were not only not subject to the acceptance agreement, but the oral agreement constituted a waiver of any bankers lien on the proceeds of such drafts. In reply to this contention, particularly as it relates to the two Birla Bros. 180 days sight drafts deposited October 8, 1930, counsel for defendant call attention to the letter of Comptroller Lyons of date October 7th, in which it is stated: "We are sending by Mr. Hall, documents covering a shipment," etc., and the two accompanying letters signed by the assistant manager of the Foreign Department, in which are mentioned not only the invoices and bills of lading, but the sight and 180 days sight drafts. It is contended that these letters show the latter drafts to be also "security under the acceptance agreement." It is instructive to consider what, if any, security was or could be afforded by the 180 days sight drafts. If the sight drafts were paid upon presentation, the acceptances issued on ac-

count of that shipment would be fully covered. If they were not so paid the bank would be compelled to rely on its authority to sell the merchandise constituting the shipment of which it held the invoices and bills of lading. In that event the 180 days sight drafts would be worthless [126] paper. As testified by Mr. Gilstrap, it was "the collections which were the security for this particular credit."

The subsequent conduct of the parties supports the contention of plaintiff that it was understood and agreed between the Richfield Company and defendant that transactions between the Foreign Departments of the two companies were to be regarded as separate and distinct from other transactions, the effect of which was a waiver upon the part of defendant of any bankers lien on collections upon foreign drafts otherwise than in respect to acceptances based on such transactions. Both prior and subsequent to the receivership collections upon foreign drafts which were not a basis for acceptances were deposited to the credit of the checking account of the Richfield Company. Drafts aggregating more than $30,000 were so deposited. The letters of defendant bank of February 26th and March 5th, and that of Mr. Pagen for the receiver of March 3, 1931 are significant. As a result of that correspondence not only was the balance of $7749.58 remaining after all acceptances had been paid, placed to the credit of the receiver, but in addition thereto a further collection received in the sum of $11,082.51. There is no comment in the letter of

Gilstrap of March 5th, advising the receiver of these deposits, in reference to the expression in his letter of February 26th—"The remainder of the proceeds we are holding in accordance with the notice given you by our wire of January 16."

Much argument has been advanced by counsel for both parties respecting the meaning of a portion of said wire of January 16th—"We are holding certain collections as security for acceptances please understand that we continue to reserve all our rights for bankers lien against these collections."

Counsel for plaintiff contend that the plain meaning of this expression is that certain of the collections only were [127] being held as security for acceptances, and that all others, including those involved in this suit, were not so held. It is further contended that it was the understanding acquiesced in by all creditor banks that such collections were to be deposited to the credit of the receiver; and the action of Security-First National Bank of Los Angeles, the only other bank handling foreign drafts, in so depositing collections on six such drafts totaling $152,524.03, is cited in support of the contention that such was the understanding.

It is urged by counsel for defendant that the word "certain" as used in the telegram, is not a word of limitation, and that the expression "all our rights for bankers lien" is comprehensive, and applies to the collections here involved; that the only waiver of lien referred to in either the telegram of the receiver or the reply thereto of date

January 16th was in relation to the balance in checking account.

In the view the court takes of this case it is unnecessary to determine whether the exchange of telegrams of January 16th would constitute a waiver upon the part of defendant bank of all lien rights otherwise than as security for acceptances. It is the conclusion of the court that there was such waiver growing out of the understanding between the parties in relation to collections on foreign drafts and acceptances based thereon, that the transactions between the foreign departments of the two contracting parties be kept separate and distinct from other financial transactions. Whatever otherwise might be said to be the effect of defendants' wire of January 16th, it is not inconsistent with the view that defendant had long before waived its rights of lien in respect to the collections involved in this suit. Reynes v. Dumont, 130 U. S. 354; Union Bank & Trust Co. v. Loble, 20 F (2d) 124; Buckner v. Leon & Co., 204 Cal. 225; Campbell v. Miller, 205 Cal. 22; Blahnik v. Small Farms Imp. Co., 181 Cal. 379; Savings Bank v. Ashbury [128] 117 Cal. 96; Smith v. Smith, 200 S. W. (Tex.) 545.

Complainant is entitled to a decree as prayed in his bill of complaint requiring defendant to pay over to him as such receiver the proceeds of certain foreign drafts described in the complaint collected by defendant and totaling the sum of $144,758.79. It is ordered that a decree be entered accordingly.

The respective parties may submit proposed findings, conclusions and form of decree.

Dated this 11th day of March, 1933.

FRANK H. NORCROSS
District Judge.

[Endorsed]: Filed, Mar. 13, 1933 [129]

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled action came on regularly for trial on July 6, 1932, before the above entitled court, sitting without a jury, a jury having been specifically waived by the parties hereto, Honorable Frank H. Norcross presiding, Messrs. Gregory, Hunt & Melvin and Sullivan, Roche, Johnson & Barry apearing as counsel for complainant William C. McDuffie, as ancillary receiver of Richfield Oil Company of California, a corporation, and Messrs. Heller, Ehrman, White & McAuliffe appearing as counsel for defendant Wells Fargo Bank & Union Trust Co., a corporation, and evidence both oral and documentary having been introduced on behalf of the parties and the matter having been thereafter submitted to the court for decision and the court being fully advised in the premises now renders herein its findings of fact and conclusions of law:

FINDINGS OF FACT.

The court finds as follows, to-wit:

I.

Complainant The Republic Supply Company of California is a California [130] corporation, having its principal place of business in Los Angeles, California, and is a citizen and resident of said state.

II.

Defendant Richfield Oil Company of California is a Delaware corporation, having its principal place of business in Los Angeles, California, and is a citizen and resident of the State of Delaware.

III.

Defendant Wells Fargo Bank & Union Trust Co. is a California corporation, having its principal place of business in San Francisco, California, and is a citizen and resident of said state.

IV.

On January 15, 1931, in an action commenced in the District Court of the United States, in and for the Southern District of California, Central Division, and entitled "The Republic Supply Company of California, a corporation, Complainant, v. Richfield Oil Company of California, a corporation, Defendant, In Equity No. S-125-J, said court made and entered its order appointing William C. McDuffie receiver of all the property, assets and business of said Richfield Oil Company

of California, and ever since said time William C. McDuffie has been and now is the duly appointed, qualified and acting receiver for said Richfield Oil Company of California, authorized by said order to take forthwith and have complete, exclusive control, possession and custody of all the property and assets, of every kind, character and description, within the Ninth Judicial Circuit, owned by or under the control or in the possession of said Richfield Oil Company of California, and all persons, firms and corporations by said order were forthwith directed to deliver to said receiver all of said property and assets of said Richfield Oil Company of California.

V.

Thereafter and on said 15th day of January, 1931, in an action commenced in the District Court of the United States, in and for the Northern District of California, Southern Division, and entitled "The Republic Supply Company of California, a corporation, Complainant, v. Richfield Oil Company of California, a corporation, Defendant", In Equity No. 2758-K, said court made and entered its [131] order appointing said William C. McDuffie ancillary receiver of all the property, assets and business of said Richfield Oil Company of California in said Northern District of California; thereafter and on January 20, 1931, said William C. McDuffie duly qualified as such ancillary receiver and ever since said time has been and now is the duly appointed, qualified and acting ancillary re-

ceiver of and for said Richfield Oil Company of California within said Northern District of California, authorized by said order to take forthwith and have complete, exclusive control, possession and custody of all the property and assets, of every kind, character and description, within said Northern District of California, owned by or under the control or in the possession of said Richfield Oil Company of California, and all persons, firms and corporations by said order were forthwith directed to deliver to said ancillary receiver all of said property and assets of said Richfield Oil Company of California.

VI.

On or about July 12, 1930, said Richfield Oil Company of California became indebted to said Wells Fargo Bank & Union Trust Co. in the sum of $625,000.00, and at said time made, executed and delivered to said bank its promissory note, without security, evidencing said indebtedness, payable ninety days after date, with interest thereon at the rate of six per cent per annum. At said time no agreement of any kind for collateral or as security for the repayment of said amount was executed by said Richfield Oil Company of California to or for the benefit of said bank.

VII.

Thereafter and during the month of August, 1930, an oral agreement was entered into between said Richfield Oil Company of California and said

defendant bank whereby said Richfield Oil Company of California agreed to deposit with said bank, for collection only, drafts drawn by said Richfield Oil Company of California on certain of its customers residing in foreign countries, which drafts were drawn for payment of certain shipments of commodities by said Richfield Oil Company of California to said customers. It was then and there further orally agreed by and between said Richfield Oil Company of California and said bank that the collection of said foreign drafts by said bank should be entirely separate and [132] apart from all other financial obligations and transactions theretofore or thereafter to be conducted in the ordinary course of business, between said parties.

VIII.

Pursuant to and under and in reliance upon said agreement of August, 1930, said Richfield Oil Company of California thereafter deposited with said bank, for collection only, and not as security for the payment of the above or any indebtedness owing from said Richfield Oil Company of California to said bank, the following drafts:

Draft No. 103005, dated October 8, 1930, drawn by said Richfield Oil Company of California on Birla Bros., Ltd. at Calcutta, India, in the sum of $63,950.00, and payable at 180 days sight.

Draft No. 103006B, dated October 8, 1930, drawn by said Richfield Oil Company of California on Birla Bros., Ltd. at Calcutta, India,

in the sum of $55,900.75, and payable at 180 days sight.

Draft No. 13107, dated January 8, 1931, drawn by said Richfield Oil Company of California on Birla Bros., Ltd. at Calcutta, India, in the sum of $23,607.50, and payable at 180 days sight.

Draft No. 123014, dated December 27, 1930, drawn by said Richfield Oil Company of California on Ricardo Velazquez, in the sum of $1219.00.

IX.

On or about the maturity thereof draft numbered 103005, dated October 8, 1930, in the sum of $63,-950.00, hereinabove and in finding VIII hereof more particularly described, was paid in full by said drawee thereof and thereafter and on or about June 10, 1931, the net proceeds of said draft were received by defendant bank at San Francisco, California.

On or about the maturity thereof draft numbered 103006B, dated October 8, 1930, in the sum of $55,900.75, hereinabove and in finding VIII hereof more particularly described, was paid in full by said drawee thereof and thereafter and on or about June 10, 1931, the net proceeds of said draft were received by defendant bank at San Francisco, California. Said aggregate net proceeds of said two last mentioned drafts so received by defendant bank amounted to $119,512.54.

On or about the maturity thereof draft numbered 13107, dated January 8, 1931, in the sum of $23,-607.50, hereinabove and in finding VIII hereof more [133] particularly described, was paid in full by said drawee thereof and thereafter and on or about September 10, 1931, the net proceeds of said draft, amounting to $23,532.08, were received by defendant bank at San Francisco, California.

On or about the maturity thereof draft numbered 123014, dated December 27, 1930, in the sum of $1219.00, hereinabove and in finding VIII hereof more particularly described, was paid in full by said drawee thereof and thereafter and on or about May 18, 1931, the net proceeds of said draft, amounting to $1245.11, were received by defendant bank at San Francisco, California.

X.

Included in the drafts set forth in the amended bill of complaint herein is one numbered 103023, in the principal sum of $779.10, drawn by said Richfield Oil Company of California on Sociedad Automoviliaria, which has never been paid by said drawee.

XI.

Included in the drafts set forth in the amended bill of complaint herein is one numbered 13103, in the principal sum of $53.45, drawn by Richfield Oil Company of California on Ito Bergonzali, which has never been paid by said drawee.

XII.

Thereafter and during the month of October, 1930, said Richfield Oil Company of California and said bank made and entered into an agreement that drafts drawn on said bank by said Richfield Oil Company of California and payable to said Richfield Oil Company of California, duly endorsed, which said drafts were termed "banker's acceptances", would be endorsed and accepted for payment by said bank and that such acceptances, to an amount aggregating $155,000.00, would be sold and negotiated by said bank, and that the net proceeds thereof, less discounts, should be credited to the account of said Richfield Oil Company of California at said bank. At said time it was further agreed that such acceptances would be payable ninety days after the date of each thereof and would be based upon and secured only by such drafts of Richfield Oil Company of California drawn upon its responsible foreign customers for shipment of commodities as were slightly greater in amount and of a maturity shorter than the banker's acceptances, for the payment of which, before maturity, such drafts were respectively reserved. [134]

XIII.

At or about the time of the making of said agreement of October, 1930, for the issuance by defendant bank of said banker's acceptances and for the purpose of securing said acceptances to the amount of $150,000.00, said Richfield Oil Com-

pany of California on October 4, 1930, executed and delivered to defendant bank a printed document prepared by defendant bank and designated "acceptance agreement"; on November 28, 1930, a second printed document prepared by defendant bank, in the same form as the first, was executed and delivered by said Richfield Oil Company of California to defendant bank for the purpose of securing additional banker's acceptances aggregating the sum of Five Thousand Dollars ($5,000.00). Said acceptance agreements are marked respectively Plaintiff's Exhibits 16 and 38 and are hereby made a part hereof by reference.

XIV.

Each of the acceptance agreements above referred to was incomplete on its face in that the drafts constituting the security for the issuance of banker's acceptances under each of said agreements were not designated or identified in any manner whatsoever, parol evidence being necesasry to determine what drafts constituted the subject matter of each of said acceptance agreements.

XV.

A certain draft No. 103012, in the principal sum of $2.441.00, drawn by said Richfield Oil Company of California on Buena Y Cia and included in the ancillary amended bill of complaint herein, was deposited with defendant bank by said Richfield Oil Company of California under and pursuant to the terms and conditions of said written acceptance

agreement dated October 4, 1930, but said draft was not included under said oral agreement entered into during the month of August, 1930, between Richfield Oil Company of California and defendant bank.

XVI.

Thereafter and pursuant to said agreement of October, 1930, hereinabove and in finding XII hereof particularly referred to, said bank negotiated and sold said banker's acceptances aggregating the sum of $155,000.00 and deposited the net proceeds thereof to the account of said Richfield Oil Company of California. Said banker's acceptances were secured only by foreign drafts of said Richfield Oil [135] Company of California of an aggregate amount slightly in excess of the amount of said banker's acceptances so issued, and, excepting as to draft No. 103012 hereinabove in finding XV mentioned, having a maturity shorter than the maturity of said banker's acceptances. None of said foreign drafts herein in this finding referred to is involved in or constitutes the subject matter of this litigation. Thereafter and on or about February 26, 1931, the total amount of said banker's acceptances, so negotiated as aforesaid, in the sum of $155,000.00, was fully paid and discharged.

XVII.

Excepting as to said draft No. 103012 hereinabove and in finding XV hereof referred to, only those foreign drafts drawn by Richfield Oil Com-

pany of California, the proceeds of which could be and actually were received by defendant bank at San Francisco at least one day before the maturity date of the acceptances secured thereby, were the subject matter of the acceptance agreement dated October 4, 1930, and the supplemental acceptance agreement dated November 28, 1930; all other foreign drafts drawn by Richfield Oil Company of California, including those set forth in finding VIII hereof, were deposited with defendant bank by said Richfield Oil Company of California for collection only and formed the subject matter of the oral agreement made and entered into between said parties during the month of August, 1930.

XVIII.

At the time of the appointment and qualification of said William C. McDuffie as receiver for Richfield Oil Company of California, to-wit, on January 15, 1931, said Richfield Oil Company of California was indebted to certain banks throughout the United States in an amount of approximately $10,000,000.00, including said defendant bank upon the aforesaid indebtedness of $625,000.00 due upon the above described promissory note dated July 12, 1930; in each of said banks said Richfield Oil Company of California maintained a deposit account which it used in the ordinary course of business.

XIX.

At or about the time of the appointment and qualification of said receiver, it was agreed by and

between said receiver and each of said banks, in-
[136] cluding defendant bank, that each of said banks would forthwith transfer the deposit account so held by it in the name of Richfield Oil Company of California, to that of William C. McDuffie as its receiver, and would carry on and conduct said account in the ordinary course of business and would not exercise any claim of banker's lien upon said account, including collections, except such collections as were security for acceptances theretofore issued by defendant bank; such agreement was made in order to enable said receiver to carry on and transact the affairs of said Richfield Oil Company of California for the benefit of the creditors thereof until the termination of said receivership.

XX.

Thereupon and thereafter all of said banks, pursuant to said agreement, transferred said accounts to the credit of said receiver and all except defendant bank have since continued to carry on and conduct said accounts as the same had been conducted in the ordinary course of business with said Richfield Oil Company of California and have refrained from asserting any banker's lien or right of set-off against said accounts and collections therein.

XXI.

Said Wells Fargo Bank & Union Trust Co., in violation of its said agreement by and with said receiver and with said other banks, has applied

the proceeds of the collection of the four drafts set forth and described in finding VIII hereof, to its preexisting unsecured promissory note, dated July 12, 1930, of approximately $625,000.00; said receiver of Richfield Oil Company of California has heretofore demanded of deefndant bank restoration and repayment to his account of the proceeds of said drafts, but said defendant bank has refused and still refuses so to do.

XXII.

On or about March 30, 1931, defendant bank filed with William C. McDuffie, as receiver for Richfield Oil Company of California, its proof of claim, duly verified, alleging that said Richfield Oil Company of California at that time was indebted to claimant in the sum of $636,189.95, which in the main covered the principal sum of said promissory note dated July 12, 1930, plus accrued interest thereon, and also included two claims for small sums not involved in this [137] litigation. Said verified claim as filed by said bank concluded with the statement "that no securities are held by said claimant for said indebtedness".

Thereafter and on or about the 19th day of May, 1931, after first having obtained leave of Court, defendant filed with said William C. McDuffie as receiver of Richfield Oil Company of California its amendment to Proof of Claim, wherein it was set forth by said defendant that the drafts hereinabove mentioned were held as security for the general

indebtedness of Richfield Oil Company of California to said defendant.

XXIII.

Both prior and subsequent to the date of said receivership, proceeds of foreign drafts drawn by Richfield Oil Company of California and deposited by it with defendant bank for collection only and not as security for acceptances issued by defendant bank, were deposited by defendant bank to the credit of said Richfield Oil Company of California and/or its receiver, without any claim of right of offset or banker's lien on the part of said defendant bank.

XXIV.

None of the drafts more particularly set forth in finding VIII hereof, the proceeds of which are the subject matter of this action were deposited by said Richfield Oil Company of California with defendant bank under or by virtue of the terms or provisions of said written contract designated "acceptance agreement", dated October 4, 1930, executed by said Richfield Oil Company of California and addressed to defendant bank, nor were any of said drafts deposited by said Richfield Oil Company of California with defendant bank under or by virtue of the terms or provisions of said supplemental acceptance agreement entered into between said parties and dated November 28, 1930; nor were any of said drafts subject to or controlled by any of the terms or provisions of either of said acceptance agreements.

CONCLUSIONS OF LAW.

I.

The above entitled court has jurisdiction of the subject matter of and the parties to the above entitled action.

II.

Defendant bank has never at any time acquired a valid lien against any of [138] the drafts set forth and described in finding VIII of the findings of fact herein, or the proceeds of any of said drafts.

III.

By said oral agreement and understanding entered into between said Richfield Oil Company of California and defendant bank during the month of August, 1930, said defendant bank did waive any and all of its lien rights, statutory or otherwise, with respect to the drafts set forth and more particularly described in finding VIII of the findings of fact herein, and the proceeds of each thereof, and it did not thereafter by any act acquire any such lien right theretofore waived, or otherwise.

IV.

Defendant bank by its said oral agreement entered into with said Richfield Oil Company of California during the month of August, 1930, and by its conduct both prior and subsequent to the deposit of said foreign drafts set forth and described in finding VIII of the findings of fact herein, the net proceeds of which are now the subject matter of

this litigation, did waive its right of offset or banker's lien respecting all of said drafts and did further waive its right to apply the proceeds of said drafts or any thereof toward said or any indebtedness of said Richfield Oil Company of California to it.

V.

Drafts numbered 103005, 103006B, 13107 and 123014, hereinabove particularly described in finding VIII of the findings of fact herein, were not deposited in the ordinary course of business by said Richfield Oil Company of California with defendant bank, but were deposited with said bank under a special agreement and for a special purpose, and constituted a specific deposit or trust.

VI.

Defendant bank, by its said oral agreement entered into with Richfield Oil Company of California during the month of August, 1930, and by its subsequent acts and course of conduct, dealt with said Richfield Oil Company of California and its receiver under circumstances inconsistent with the exercise by it of a right of set-off or banker's lien, with respect to said drafts described in finding VIII of the findings of fact herein or their proceeds, or any thereof. [139]

VII.

Defendant bank is entitled to retain the sum of $469.06, representing the net proceeds of draft

No. 103012, which was in the principal sum of $2,441.00, drawn by said Richfield Oil Company of California on Buena Y Cia and complainant William C. McDuffie, as ancillary receiver for Richfield Oil Company of California, has no right, title or interest in or to the same or any part thereof.

VIII.

Complainant William C. McDuffie, as ancillary receiver for said Richfield Oil Company of California, is the true owner of the net proceeds of said drafts numbered 103005, 103006B, 13107 and 123014, more particularly described in finding VIII of the findings of fact herein, aggregating the sum of $144,289.73, and defendant Wells Fargo Bank & Union Trust Co. has no right, title or interest in or to the same or any part thereof.

IX.

Complainant William C. McDuffie, as ancillary receiver of Richfield Oil Company of California, a corporation, is entitled to a judgment and decree herein for the sum of $144,289.73, representing the net proceeds of drafts numbered 103005, 103006B, 13107 and 123014, more particularly described in finding VIII of the findings of fact herein, together with interest on the net proceeds of each of said drafts, at the rate of seven per cent per annum, from the date the net proceeds of each of said drafts were received by defendant bank at San Francisco, California, all as set forth in finding IX of the findings of fact herein, which said interest to

date amounts to the sum of Nineteen Thousand and Sixteen and 12/100 Dollars ($19,016.12), together with said complainant's costs of suit herein.

Let judgment and the decree of this court be entered accordingly.

Dated: May 12th, 1933.

FRANK H. NORCROSS

Judge.

Approved as to form as provided in Rule 22:

.....

Solicitors for Defendant Wells Fargo Bank & Union Trust Co.

[Endorsed]: Filed May 13th 1933 [140]

In the District Court of the United States, Northern District of California, Southern Division.

No. 2758-K

In Equity.

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation,

Complainant,

vs.

RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation,

Defendant.

WILLIAM C. McDUFFIE, as ancillary receiver of Richfield Oil Company of California, a corporation,

Complainant,

vs.

WELLS FARGO BANK & UNION TRUST CO., a corporation,

Defendant.

DECREE

This cause came on to be heard on July 6, 1932, and thereafter was argued by counsel; and thereupon, upon consideration thereof, IT WAS ORDERED, ADJUDGED AND DECREED as follows, viz:

That defendant Wells Fargo Bank & Union Trust Co. be and it is hereby ordered, directed and required to pay over forthwith to complainant

William C. McDuffie, as ancillary receiver of Richfield Oil Company of California, the sum of One Hundred Sixty-Three Thousand Three Hundred Five and 85/100 Dollars ($163,305.85), in lawful money of the United States of America, representing the net proceeds of four certain drafts numbered 103005, 103006B, 13107 and 123014, amounting to the sum of One Hundred Forty-four Thousand Two Hundred Eighty-nine and 73/100 Dollars ($144,289.73), collected by defendant bank for the account of said complainant, together [141] with interest on the net proceeds of each of said drafts, at the rate of seven per cent (7%) per annum, computed from the respective dates the net proceeds of each thereof were received by defendant bank at San Francisco, California, which said interest in the aggregate to date amounts to the sum of Nineteen Thousand Sixteen and 12/100 Dollars ($19,016.12), together with complainant's costs of suit herein amounting to the sum of

Dollars ($).

Dated: May 12, 1933.

FRANK H. NORCROSS,
District Judge.

Approved as to form as provided in Rule 22:
HELLER, EHRMAN, WHITE & McAULIFFE
Solicitors for Defendant Wells Fargo Bank & Union Trust Co.

[Endorsed]: Filed and entered May 13th, 1933. [142]

[Title of Court and Cause.]

ENGROSSED STATEMENT OF EVIDENCE REQUIRED BY EQUITY RULE 75.

BE IT REMEMBERED That the above entitled cause came on regularly for trial before the above entitled Court sitting in equity on the 6th day of July, 1932, upon the issues formed by the ancillary amended bill of complaint and the answer thereto, [143] Theodore J. Roche, Esq. and Messrs. Gregory, Hunt and Melvin, by T. T. C. Gregory, Esq. and Ward Sullivan, Esq. appearing as counsel for complainant, and Messrs. Heller, Ehrman, White & McAuliffe, by Lloyd W. Dinkelspiel, Esq. appearing as counsel for defendant. Counsel for both parties stipulated that a trial by jury be waived.

COMPLAINANT'S CASE.

Complainant offered in evidence a copy of the bill of complaint filed in the case of Republic Supply Company of California, a corporation, v. Richfield Oil Company of California, a corporation, filed with the Clerk of the United States District Court in and for the Southern District of California, on January 15, 1931; a copy of the answer filed in said case by the Richfield Oil Company of California; a copy of the Order appointing William C. McDuffie as receiver of Richfield Oil Company of California; a copy of the bill of complaint filed in

the District Court of the United States, Northern District of California, Southern Division, in the case of Republic Supply Company, a corporation, versus Richfield Oil Company of California, a corporation; a copy of the answer filed in that case by Richfield Oil Company of California, a corporation; a copy of the Order made by said Court appointing William C. McDuffie as ancillary receiver of Richfield Oil Company of California; and the oath of office taken by said William C. McDuffie. These documents were received in evidence and stipulation was made that they should be deemed to have been read in evidence without the necessity of marking them as exhibits. Said documents were the pleadings and the Orders in the case in which petition was made for the appointment of a receiver and an ancillary receiver for Richfield Oil Company of California, consent to which appointments was made in said answers and the appointments made by the Court in said Orders. It was stipulated between counsel that a copy of said Order appointing William C. McDuffie receiver of [144] Richfield Oil Company of California was sent to defendant, Wells Fargo Bank & Union Trust Co., on January 15, 1931, and was received by said bank on January 16, 1931, and further that at the request of said Wells Fargo Bank & Union Trust Co. an additional certified copy of said Order was sent it a day or so later.

WILLIAM C. McDUFFIE

was then called as a witness by the complainant and testified as follows:

Direct Examination:

I reside at Pasadena, California, and have resided there for about ten or eleven years. My occupation is that of receiver of Richfield Oil Company of California, and I have been such receiver since the 15th of January, 1931. During the period from the 24th day of December, 1930, until the 15th day of January, 1931, I was president of the Richfield Oil Company of California. Prior to the 24th day of December, 1930, I was president of Pacific Western Oil Company and had no connection with Richfield Oil Company of California. During the latter part of 1930, and the first six weeks of 1931, the offices of the Richfield Oil Company were at 555 South Flower Street, Los Angeles. The Richfield Oil Company prior to the time that I was appointed receiver was engaged in all phases of the oil business; producing, piping oil, the finding of oil, retail sales, wholesale sales, of all products; and this business continued after I became receiver. At the time I became receiver of the Richfield Oil Company it had what is known as an export or foreign department, the manager of which was Mr. Hall. Mr. Hall had been manager during the time that I was president of Richfield Oil Company and before my appointment as its receiver, and he continued as such during the greater part of 1931. At the time that I became

(Testimony of William C. McDuffie.)

receiver of Richfield Oil Company it was exporting its commodities and products and had been doing so during the time that I acted as its president and before that time to my knowledge. During this period of time, Richfield Oil Company had customers in foreign countries to which its goods and commodities were sold and shipped, [145] and that situation continued after I was appointed receiver, and has continued down to the present time. At the time of my appointment as receiver, I wrote a letter to Wells Fargo Bank & Union Trust Co., in which it was stated that a copy of the Order appointing me as receiver was being sent, but I do not know that it was attached to the letter at the time I signed it.

A letter was introduced in evidence by complainant and was received in evidence and marked Plaintiff's Exhibit 1. Said letter was written on the letterhead of Richfield Oil Company of California and was dated Los Angeles, January 15, 1931, and was addressed to Wells Fargo Bank & Union Trust Co., Market and Montgomery Streets, San Francisco, California, and was in the words and figures following, to-wit:

> "I was this morning, by order of the United States District Court of California, appointed receiver of Richfield Oil Company of California, a Delaware corporation, and am enclosing herewith a copy of said order.

(Testimony of William C. McDuffie.)

It is my desire to open an account with your bank to be entitled 'Richfield Oil Company of California, William C. McDuffie, Receiver', and to authorize the following persons to sign checks drawn on the account in the manner hereinafter specified.

(Then followed names of the parties.)

In opening the account of Richfield Oil Company of California, William C. McDuffie, Receiver, please transfer the balance appearing to the credit of the Richfield Oil Company of California at the close of business January 14, 1931, to the credit of the account 'Richfield Oil Company of California, William C. McDuffie, Receiver', and forward closing statement together with all cancelled checks for the account of the Richfield Oil Company of California, to me at the address mentioned in the preceding paragraph. Please confirm, by wire, the amount of balance transferred.

Yours very truly,

WILLIAM C. McDUFFIE."

Said witness testified further as follows:

I had had no business with the Wells Fargo Bank & Union Trust Co. immediately prior to my appointment as receiver. The Richfield Oil Company had had some business relations with the Wells Fargo Bank & Union Trust Co. to my knowledge. [146]

(Testimony of William C. McDuffie.)

On January 14, 1931, immediately prior to the date of my appointment as receiver, a meeting was held in my office in the Richfield Oil Company's building at Los Angeles, attended by the bankers interested in the Richfield Oil Company.

At this meeting Security First National Bank of Los Angeles was represented by Mr. Hardacre and Mr. Rude; the Bank of America was represented by Mr. Nolan; the California Bank by Mr. Page; Citizens National Bank of Los Angeles was represented by Mr. Herbert Ivey and Mr. L. O. Ivey; the Chemical Bank of New York was represented by Mr. Darling. There was a Chicago bank represented by Mr. Buchanan and I don't know whether he represented the Continental or another Chicago bank; the American Trust Company was repreпresented by Mr. Hill. I do not think the First Seattle Dexter-Horton National Bank was represented.

> (The foregoing testimony, commencing with the words, "At this meeting" was objected to by counsel for defendant on the ground that it was incompetent, irrelevant and immaterial and not binding on defendant. Objection was overruled and exception noted.)

Prior to the date of my appointment as receiver, Richfield Oil Company of California was indebted to banks in California and elsewhere in a total amount of slightly in excess of Ten Million Dollars. This indebtedness was unsecured.

(Testimony of William C. McDuffie.)

(It was here stipulated between counsel that the statement that the total indebtedness was unsecured should not be taken as a concession as against defendant of its contention that the indebtedness of Richfield Oil Company to it was secured by certain foreign drafts and the collections thereof as claimed in this action.)

At the time that I was appointed receiver, there was an outstanding indebtedness due from Richfield Oil Company to Wells Fargo Bank & Union Trust Co. My remembrance was that it was Six [147] Hundred and Fifty Thousand Dollars. To my knowledge this indebtedness was not secured aside from the claim here made by the defendant bank. The Ten Million Dollar indebtedness to which I have referred includes the Six Hundred and Twenty-five Thousand Dollars due to Wells Fargo Bank & Union Trust Co. Richfield Oil Company was indebted likewise to a large number of creditors located in different parts of the United States, and all of this indebtedness was unsecured. A large number of said creditors were at that time pressing their claims against the company.

On January 16th, after my appointment as receiver, another meeting of the representatives of these banks was held in my office in Los Angeles in the Richfield Building, called at my request. I called the meeting because I had been advised that certain of the banks had seized balances of Richfield Oil Company. I told the bankers at this meet-

(Testimony of William C. McDuffie.)

ing that conditions were such that if they felt it was necessary to seize these balances that I, as receiver, could not carry on and that the receivership must be immediately terminated, and that it would be necessary to immediately go into bankruptcy. I told them that it was not only necessary that I have the balances restored but that I have their assurance that the normal flow of business would be allowed to go on; collections were coming in, of course; that if they merely restored my balances it would be obvious that it would be impossible to carry on business if collections were seized. I asked them if they would not restore to me all funds that might be available. I particularly brought that to their attention, that, after all, the receivership was created to protect the estate and to carry it on, and that without funds it was utterly impossible to carry on the estate.

(The foregoing testimony commencing with the words "After my appointment as receiver" was objected to by counsel for defendant on the ground that it was incompetent, irrelevant and immaterial, hearsay and not binding on defendant and an attempt to assert the rights of persons not parties to this action. Objection was overruled and exception noted. It was here stipulated that counsel for defend- [148] ant might cross-examine the witness on this testimony without waiving the objection and that

(Testimony of William C. McDuffie.)

the objection would run to the whole line of testimony in this respect.)

At that time I knew that some foreign drafts were on deposit with some of the other banks, but I did not know exactly with what banks they were.

(Counsel for defendant objected to the last testimony on the same grounds urged in the previous objection. Objection was overruled and exception noted.)

At this meeting there was no representative present from Wells Fargo Bank & Union Trust Co.

At that time I had been acquainted with Mr. Eisenbach of the Wells Fargo Bank & Union Trust Co. for a year at least, and before I was connected with Richfield he had spoken to me about Richfield and to my knowledge he had from time to time made investigations respecting the affairs of Richfield Oil Company and its general condition.

The banks represented at the meeting agreed that they would not exercise their right of set-off upon the Richfield Oil Company balances, and all those who had already exercised the right of set-off agreed that they would restore the balances, provided all of the banks did so. At this meeting it was said that it was necessary to get the consent of the Wells Fargo Bank as well as the other out-of-town banks.

(The foregoing testimony was objected to by counsel for defendant on the same grounds as

(Testimony of William C. McDuffie.)

were urged with respect to the last objection. Objection overruled and exception noted.)

At the conclusion of that meeting a telegram was prepared after discussions between Mr. Hardacre and the others present, and a copy of said telegram was transmitted to each one of the out-of-town banks including the Wells Fargo Bank & Union Trust Co.

A copy of this telegram was introduced in evidence by complainant and was received in evidence and marked Plaintiff's [149] Exhibit 2. Said telegram was in the words and figures as follows:

"Los Angeles California 1230P Jan 16th 1931
Julian Eisenbach
VP WFBAUTC Sanfrancisco Calif
As receiver I am ordered by Federal Court to take over all assets including cash in banks stop while you have undoubtedy right of offset, such right if exercised will seriously cripple receivers operations. It is necessary therefore to request that all banks restore to receiver full cash balance stop Please therefore transfer such funds to a new account on your books in my name as receiver evidence of my authority and signature cards will follow by mail stop Local banks have indicated they will acquiesce in this program.

Wm C McDuffie Receiver of
Richfield Oil Co of California"

(Testimony of William C. McDuffie.)

Said witness testified further as follows:

Prior to the transmission of this telegram I had not been advised by the Wells Fargo Bank that they had intended to exercisce a right of set-off against any of the funds in their possession. After sending the telegram marked Plaintiff's Exhibit 2 to the Wells Fargo Bank I received an answer.

A telegram was introduced in evidence by complainant and was received in evidence and marked Plaintiff's Exhibit 3. Said telegram was in words and figures as follows:

"Sanfrancisco Calif 16 1931 Jan 16PM 6 00
W C McDuffie
Receiver Richfield Oil Co of California Richfield Bldg
555 South Flower St
Losangeles Calif.
Replying telegram we are willing to restore into your name as receiver Richfields balance in checking account provided we are notified by you that all companys banks have taken similar action stop We are holding certain collections as security for acceptances please understand that we continue to reserve all our rights for bankers lien against these collections
Julian Eisenbach Vice President Wells Fargo Bank & Union Trust Co."

Said witness testified further as follows:

I received an answer to each one of the wires

(Testimony of William C. McDuffie.)
which I [150] sent to all of the banks and each of them responded that they would restore the funds where the funds had been set off and would refrain from exercising any right of set-off which they might have, provided all the other banks did likewise. I received a wire from Percy H. Johnston, president of the Chemical Bank, New York. After receipt of this telegram the Chemical Bank restored the cash balances of Richfield and whatever other credits were in the bank. I also received from Jerre L. Dowling, a representative of the Chemical Bank, a telegram addressed to him signed P. H. J., said P. H. J. being P. H. Johnston.

Said telegrams were introduced in evidence by complainant and were received in evidence and marked Plaintiff's Exhibit 4. Said telegrams were in words and figures following:

"Newyork NY 16 5200P 1931 Jan 16 PM 2 42
Wm C McDuffie, Receiver
For Richfield Oil Co of California
Companys balances have been applied to indebtedness we do not propose to restore it
Percy H. Johnston President Chemical Bank and Trust Co."

(Objection to the introduction of said telegram was made by counsel for defendant on the gorund that it was incompetent, irrelevant and immaterial and not binding on defendant. Objection was overruled and exception noted. It was here stipulated that this objection would run to all the telegrams from other banks to W. C. McDuffie hereinafter

(Testimony of William C. McDuffie.)

set forth, without the necessity of repeating the objection.)

"New York NY 17 1931 Jan 17 AM 10 52

Jerre L. Dowling

Care Biltmore Hotel

Losangeles Calif

If in your judgment best for us restore Richfield balance you are authorized to make statement we will do so stop You are on the ground and should be better able to appraise than ourselves stop Noyes making strong effort to name this bank as bond depositary.

P. H. J." [151]

(It was stipulated that with reference to the following telegrams to be introduced, if they were signed by a representative of the banking interests, they would be considered telegrams of the banks.)

Complainant then introduced in evidence a telegram which was received in evidence and marked Plaintiff's Exhibit 5. Said telegram was addressed to James L. Buchanan, Hollywood, California, dated January 16, 1931, and was in words and figures as follows:

"Continental and we will replace balances as soon as we learn that Los Angeles and all other banks will do the same thing. As receiver has no jurisdiction in Illinois prefer not to place this to his credit until we have full authority

(Testimony of William C. McDuffie.)

from the company mailing you signature cards today.

A. W. Newton."

Said witness testified further as follows:

A. W. Newton represented the First National Bank of Chicago. Both the First National and the Continental restored the cash balances and the credits to the credit of the Richfield Oil Company.

Complainant then offered in evidence a telegram which was received in evidence and marked Plaintiff's Exhibit 6. Said telegram was addressed to W. C. McDuffie and dated January 22, 1931, and was sent by W. H. Parson, Chairman First Seattle Dexter-Horton National Bank. Said telegram was in the words and figures following:

> "This is to inform you that it will be agreeable with us to release funds that were on deposit with us by Richfield Oil Company and credit same back to the account of receiver of Richfield Oil Company on receipt of advice from you that all other bank creditors are doing likewise."

Complainant than offered in evidence a telegram which was received in evidence and marked Plaintiff's Exhibit 7. Said tele- [152] gram was dated January 17, 1931, was addressed to W. C. McDuffie as receiver of Richfield Oil Company, and was signed James K. Lochead, Vice President American Trust Company. Said telegram was as follows:

(Testimony of William C. McDuffie.)

"Agreeable to your request 16th will transfer Richfield balances your account as receiver."

Complainant then introduced in evidence a telegram which was received in evidence, marked Plaintiff's Exhibit 8. Said telegram was dated January 23, 1931, was signed by C. K. Grensted, Los Angeles Main Office, Bank of America, and addressed to W. C. McDuffie as receiver of Richfield Oil Company. Said telegram was as follows:

"Balance of Richfield Oil Co. three thousand six hundred fifty dollars and one cent stop Richfield Oil expense account two hundred thirty five dollars sixty five cents stop Richfield Oil Special Account eight thousand five hundred fifteen dollars and sixty five cents stop Transferred to Richfield Oil Co of California Wm C. McDuffie receiver stop Expense Account stop and Payroll Account respectively."

Complainant then offered in evidence a telegram and the same was received in evidence and marked Plaintiff's Exhibit 9. Said telegram was sent by the Security First National Bank of Los Angeles to W. C. McDuffie and was dated January 24, 1931. Said telegram was as follows:

"We credit today your receiver account thirty seven thousand nine hundred six dollars six cents balance remaining in Richfield Oil Co. account and seven thousand ninety five dollars ninety nine cents balance remaining in Rich-

(Testimony of William C. McDuffie.)

field Oil Co. executive payroll account stop Letter of confirmation follows."

Complainant then offered in evidence a letter which was received in evidence and marked Plaintiff's Exhibit 10. Said letter was dated January 19, 1931, and was sent by Mr. Hardacre, Vice President Security First National Bank of Los Angeles. Said letter reads as follows: [153]

"Dear Mr. McDuffie:

Referring to your circular telegram of January 16th, I think from our conversations you understand that this bank is willing to transfer to you as Receiver balances at credit of the Richfield Oil Company, provided all other banks in which Richfield has balances are willing to do the same thing.

I am writing this as a matter of record so you will have a complete file on the subject, because no doubt when you have a consent of all of the banks to this agreement they will individually desire to have some evidence of the unanimity of thought in this connection before they actually make the transfers to you.

We have had a number of checks deposited by the Richfield Company returned and there may be a few more yet to come. At the moment it appears we shall have a balance of about $40,000.00 to turn over to you when the unanimous consent has been secured.

Yours very truly,

A. B. Hardacre, Vice-President."

(Testimony of William C. McDuffie.)

Said witness further testified as follows:

At the date of said letter marked Plaintiff's Exhibit 10, the Security First National Bank of Los Angeles had with it on deposit for collection, drafts exceeding the value of $300,000 and said sum represented collections upon drafts in the bank's possession prior to the 15th day of January, 1931. Said sum was afterwards turned over to Richfield Oil Company.

In each case in which a bank had already exercised its so-called bankers lien or right of set-off, the balances were restored, and after the passage of these telegrams none of the banks exercised its bankers lien, not referring, however, to the action taken by the Wells Fargo Bank during the month of May, 1931.

> (It was stipulated that the foregoing testimony commencing with the words "at the date of said letter" should be subject to the same objections previously urged to this line of testimony.)

Complainant then offered in evidence a photostatic copy of a telegram and the same was received in evidence and marked Plaintiff's Exhibit 11. Said telegram was dated January 23, 1931, was signed James R. Page, President, California Bank, and addressed to Wm. C. McDuffie. Said telegram reads as follows: [154]

> "Wishing to be helpful to the company and yourself the California Bank will accede to

(Testimony of William C. McDuffie.)

your request stated in your telegram of January sixteenth subject to the other major bank creditors doing the same."

Said witness testified further as follows:

Prior to the time of my receivership and during the time of my receivership, the Richfield Oil Company sold goods and commodities throughout the United States and in other places, and it was the habit and custom of the Richfield Oil Company to take and accept checks drawn upon banks in foreign jurisdictions representing the purchase price of these commodities. The Richfield Oil Company almost continuously had in its possession, checks drawn upon banks which were located in different jurisdictions, and this was part of the usual and customary flow of its business. These checks would be put in various banks for collection, and they would have to be sent to the bank upon which they were drawn for payment. Practically about every day there would be a large amount of money in transit between the banks, which money belonged to the Richfield Oil Company. Not only were the cash balances restored where right of set-off had been exercised, but likewise all subsequent collections were deposited to the credit of the Richfield Oil Company by the banks. Outside of the moneys here involved, upon which the Wells Fargo Bank & Union Trust Co. claims this right to exercise a bankers lien and right of set-off, no bank actually

(Testimony of William C. McDuffie.)
did exercise a bankers lien or right of set-off as against any funds or collections.

(The foregoing testimony commencing with the words "Not only were the cash balances" was objected to by counsel for defendant on the ground it was incompetent, irrelevant and immaterial and not binding on defendant. Objection was overruled and exception noted.)

The witness then testified from a memorandum prepared by himself as follows:

This is a statement of the outstanding unsecured debts of the Richfield Oil Company of California to various banks. The Bank of America of California, at Los Angeles, $2,060,000. California Bank, Los Angeles, $250,000. Chemical Bank & Trust Company, New York, [155] $625,000. Citizens National Trust & Savings Bank of Los Angeles, $625,000. Continental Illinois Bank & Trust Company, Chicago, $625,000. First National Bank, Chicago, $500,000. First Seattle Dexter-Horton National Bank, Seattle, $250,000. Wells Fargo Bank & Union Trust Co., San Francisco, $625,000. Security First National Bank of Los Angeles, $2,-210,000. Tucker, Hunter Dulin & Co., through the American Trust Company, San Francisco, $1,350,-000. Tucker, Hunter Dulin & Co., Los Angeles, $1,000,000. Manufacturers Trust Company of New York, $150,000. That makes a grand total of $10,-270,000.

(Testimony of William C. McDuffie.)

(The foregoing testimony commencing with the words "This is a statement" was objected to by counsel for defendant on the ground it was incompetent, irrelevant and immaterial and not binding on defendant. Objection was overruled and exception noted.)

Complainant introduced in evidence a letter and the same was received in evidence and marked Plaintiff's Exhibit 12. Said letter was dated January 17, 1931, and was written by J. Eisenbach, Vice President of the Wells Fargo Bank & Union Trust Co. to Wm. C. McDuffie as receiver of Richfield Oil Company. Said letter reads as follows:

"We are today in receipt of your registered letter dated January 15, in reference to account which you have asked us to open on our books to be entitled 'Richfield Oil Company of California, William C. McDuffie, Receiver'.

In this connection, we call your attention to the fact that we have not received your reply to our telegram of January 16 as follows:

'Replying telegram we are willing to restore into your name as Receiver Richfield's balance in checking account provided we are notified by you that all company's banks have taken similar action stop We are holding certain collections as security for acceptances Please understand that we continue to reserve all our

(Testimony of William C. McDuffie.)

rights for bankers lien against the collections.'

Pending notification by you that all of the Company's banks have restored to the Receiver the Company's cash balances, we have taken no action towards such restoration on our part. We have, however, opened the account of Richfield Oil Company of California, William C. McDuffie, Receiver, by crediting to same such deposits as have reached us subsequent to notification of your appointment. For your guidance, we enclose statement of this account as of the close of business tonight. A closing statement of the Richfield Oil Company of [156] California, with cancelled vouchers goes forward today under separate cover.

We also enclose cards for specimen signatures in duplicate.

Yours very truly,

J. Eisenbach, Vice President."

Complainant then offered in evidence a telegram dated January 22, 1931, signed by Wm. C. McDuffie as receiver of Richfield Oil Company of California, and addressed to Julian Eisenbach, Vice President, Wells Fargo Bank & Union Trust Co. Said telegram was received in evidence and marked Plaintiff's Exhibit 13, and reads as follows:

"All banks have now expressed their willingness to replace Richfield Oil Company's offset

(Testimony of William C. McDuffie.)

balances of January 15th to credit of receiver stop Will therefore greatly appreciate your at once transferring such sums to my credit advising me the amount by wire collect stop Wish express appreciation your cooperation as these funds will be of great assistance."

Complainant then offered in evidence a photostatic copy of a telegram which was received in evidence and marked Plaintiff's Exhibit 14. Said telegram was dated January 23, 1931, signed by Julian Eisenbach, Vice President, Wells Fargo Bank & Union Trust Co., addressed to Wm. C. McDuffie. Said telegram reads as follows:

"Answering wire have today placed to your credit Richfield Oil Companys offset balance of January fifteenth amount forty thousand eight hundred seventy four dollars seventy seven cents."

Complainant then offered in evidence the carbon copy of a letter addressed by the Richfield Oil Company, William C. McDuffie, Receiver, to the Wells Fargo Bank & Union Trust Co., dated January 24, 1931, and the reply to said letter, signed by Julian Eisenbach, dated January 26, 1931. Said letters were received in evidence and marked Plaintiff's Exhibit 15. The letter addressed to the Wells Fargo Bank & Union Trust Co. reads as follows: [157]

"In connection with our recent request to transfer balance in name of Richfield Oil Company of California to a new account, Richfield Oil Company of California—William C. McDuffie, Receiver, it will be appreciated if you will forward us promptly your usual form of Debit Advice closing out the old account, and a copy of your Deposit Slip or other form opening up the new account.

While in some instances we have received Bank statements showing the old account closed out, our Attorneys advise that the documents requested herein are necessary to comply with legal requirements."

The answer reads as follows:

"William C. McDuffie, Receiver,
Richfield Oil Company of California,
555 South Flower Street,
Los Angeles, California.
Dear Sir:

In accordance with your letter of January 24, we enclose statement of the account of the Richfield Oil Company of California, showing restoration of balance which was applied under our Banker's Lien and the subsequent transfer of this restored balance to the new account of Richfield Oil Company of California, William C. McDuffie, Receiver.

We also enclose copies of our debit and credit slips covering these entries.

(Testimony of William C. McDuffie.)

Trusting that the above meets with your requirements, we are,

Yours very truly,

J. Eisenbach, Vice President."

Said witness further testified as follows:

At the meeting of the bankers on January 16th, the situation I presented to them was an emergency situation. I explained to them that it was necessary for me as receiver to continue to carry the business forward. I explained as thoroughly as I possibly could that it must be obvious to them that such a business as Richfield's was dependent upon the receiver having available all possible funds, that is, all assets of every character, so that the receiver might endeavor to continue the business in some operating form, and that without funds it was utterly impossible. Payroll checks had to be met and public utility charges had to be met once a month. Freight had to be met as it was incurred. A very large amount of the business of Richfield Oil Company was being done on credit. [158]

(The foregoing testimony commencing with the words "At the meeting of the bankers" was objected to by counsel for defendant on the ground it was incompetent, irrelevant and immaterial and not binding on defendant. Objection overruled and exception noted.)

Early in May, 1931, I was advised that Wells Fargo Bank & Union Trust Co. had exercised or

(Testimony of William C. McDuffie.)

was undertaking to exercise a banker's lien or a right of set-off against the two 180 day Birla Bros. drafts deposited with the bank and payable in May of that same year, and likewise another draft for $23,000—a 180 day draft drawn upon Birla Bros., due in August. After receiving that information, I had a conversation with Mr. Eisenbach over the long distance telephone. I protested any action of this character on the part of his bank and told him that I considered it an absolute violation of the agreement that had been entered into between the banks, and a violation of his own agreement as represented by his telegram; that an emergency of the gravest character faced the company in the sense that taxes had to be met,—property taxes; that I felt that we would have to hold the bank responsible if we possibly could, if they took any such action; that I felt that he, himself, was in touch with the situation, knew what the situation was, knew how very greatly the receiver was constantly in need of funds, and that I thought that such action on the part of his bank was detrimental to the conduct of the business and detrimental to the whole spirit of the agreement under which the receivership was being carried on for the creditors. I told him that I felt this action on his part was a violation of the agreement between all banks. Mr. Eisenbach told me that this action was taken by his bank on direct instructions from Mr. Lipman, and there was nothing that he could do about it. That is the substance of his conversation.

(Testimony of William C. McDuffie.)

Cross-Examination.

The date of this conversation with Mr. Eisenbach was May 11th. I have no record or memorandum of that conversation. I am testifying as to the best of my recollection as to what was said on that occasion. My recollection is rather clear because the matter [159] was of extraordinary importance. It was a matter of considerable surprise to me that the bank would exercise its lien. I don't recall stating in that conversation, "I do not think it is playing cricket at this stage of the game." That is a phrase which I use occasionally. I am not positive that I did not say that. I think it is quite probable that I referred to Mr. Eisenbach's telegram of January 14th and that I stated that I knew he had reserved a right against certain drafts. I cannot say definitely, but inasmuch as I referred to the telegram I imagine that I might have emphasized the word "certain". My understanding of the telegram was that they were reserving rights against certain specified drafts. It was my understanding that they were reserving their rights on drafts of rather short life, the Birla Bros. drafts. I do not know the exact drafts when I used the words, "Certain drafts". I did not know in detail what drafts were referred to.

Although I cannot possibly recall the exact words, my statement to Mr. Eisenbach was something along these lines: "I am surprised at what Wells Fargo Bank did, it is crippling us. It is not fair to us; it

(Testimony of William C. McDuffie.)

is not playing cricket. I know you reserved your rights to do this, but I am asking you not to do it. It is not helping us along." In substance, I stated to Mr. Eisenbach that I knew there had been a reservation of rights, but I had not expected the bank to exercise these rights. I did not have the faintest idea the bank would reserve any rights against anything except the acceptances; otherwise I should have taken the collection out of their hands long before that.

The agreement between the banks as I understood it was that our funds of all character would be available to the receiver. This agreement was never made in written form except by an exchange of telegrams. There was nothing else in writing. The whole agreement is not necessarily set forth in my telegram to the bank and their reply. This telegram marked Plaintiff's Exhibit No. 2 sets forth my proposal to the banks. I saw the words "checking account" on the [160] defendant's reply telegram marked Plaintiff's Exhibit No. 3. A checking account is an account to check against and is not one involving foreign collections according to my understanding. My agreement with the banks is represented here by these telegrams marked Plaintiff's Exhibit No. 2 and Plaintiff's Exhibits Nos. 3 to 11, so far as the writing is concerned. I ultimately replied to the letter and telegram of the Wells Fargo Bank by Plaintiff's Exhibit No. 13, sending the same in response to the request of the

(Testimony of William C. McDuffie.)

Wells Fargo Bank, repeated twice, that I tell them whether other banks had agreed to restore these balances. By the use of the words, "All banks have now expressed their willingness to replace Richfield Oil Company's offset balances of January 15th to credit of receiver", I meant the balances of January 15th. I did not refer to collections in foreign countries that were not payable for many days thereafter. I received a letter from Wells Fargo Bank stating that it had transferred the balance to my account as receiver. I don't know exactly what constituted the deposits in the banks. So far as I know they made available all funds that they had in their keeping. I stated that all the banks restored the cash balances and the credits to the credit of the Richfield Oil Company. By credits, I mean any and everything in the form of funds, including funds that were in transit as well as funds that were actually in the account. So far as I know, the Wells Fargo Bank made available to the receiver all funds that were then in the bank. I have no doubt of this. So far as I understand it, the banks seized the balances that were in the bank as of a morning. I understood that they restored a particular amount that they had taken on that particular morning. I recall having told the local banks that the Wells Fargo Bank made a reservation in its acceptance of my request. My remembrance is that I read the telegram of the Wells [161] Fargo Bank to all the local banks after it

(Testimony of William C. McDuffie.)

was received. I make that statement notwithstanding Mr. Nolan's testimony of yesterday that he does not recall having seen or heard of that telegram. Mr. Nolan usually represented his bank. If he did not then it was Mr. Philio. I positively state that I read that telegram over the telephone to several of the banks. I did not ask Wells Fargo Bank for any explanation as to what it was doing by its reservation in the telegram to me. It is my best recollection that I did not take the telegram up with my counsel.

I did not know exactly what was in the possession of the Wells Fargo Bank. My understanding was that there were a large number of drafts for collection. No doubt I did not know in detail the terms under which those drafts were with the Wells Fargo Bank. I did not know in detail the form of the acceptance agreement that was outstanding. I knew we had an agreement with them whereby money had been raised on these drafts and the drafts were up as collateral. I did not know at that time that that agreement provided: "All bills of lading, warehouse receipts and other documents of title and all money and goods held by you as security for every acceptance shall also be held by you as security for any other liability from us to you, whether then existing or thereafter contracted." I did not know the exact amount of the advances that were outstanding on bankers acceptances. I do not know the amount now, and I did not know it on the day

(Testimony of William C. McDuffie.)

I was appointed receiver. I did not know it on the day I was addressing the bankers at the meeting in Los Angeles. I did not discuss it at that meeting. I did not discuss the collections that the Wells Fargo Bank had at that meeting or at any of the meetings prior to sending the telegram. I did not include it in my telegram. When the answer of the Wells Fargo Bank came back, I understood that they were reserving a perfectly natural right to collect against those acceptances and that they were reserving their rights as against such drafts as might have been earmarked. I under- [162] stood that specified drafts had been earmarked. I was advised of this by the accounting department of the Richfield Oil Company. Prior to my appointment as receiver, I had not discussed this Wells Fargo item in detail. I only knew generally that these four drafts, the major portion of them, were in the Wells Fargo Bank for collection and that the company had endeavored to raise money in every way they could, against everything they could. When I received this telegram marked Plaintiff's Exhibit No. 3, I did not take up with our accounting department as to what this reservation would mean. I did not make any investigation in detail of what the situation was with reference to the drafts in the possession of the Wells Fargo Bank. I did not tell any of the other bankers about it. I am unable to name any banker who asked me any question about that reservation. I am quite

(Testimony of William C. McDuffie.)

sure I read the telegram to them. To my knowledge, the Security Bank made no comments about that reservation in the telegram.

The Security First National Bank of Los Angeles turned back to us the proceeds of the drafts which it had collected.

The Wells Fargo Bank actually did turn over to us some collections after the receivership. I don't remember the date. Other than the Wells Fargo Bank, there were no creditors of Richfield with secured claims. There were bonds, of course, which are secured claims. To my knowledge the bondholders have not waived their lien. To my knowledge no other creditors who had security have waived their security.

(The foregoing testimony commencing with the words "To my knowledge" was objected to by counsel for complainant. Objection was overruled and exception noted.)

My recollection is that in the latter part of May, I attempted to revoke the power of the Wells Fargo Bank to collect these drafts. I sent a cable direct to the Bank in India or to Birla Bros.

The situation of the Richfield Oil Company became quite acute in the month of May on account of the necessity of paying property taxes. Our need for ready money in the month of May was very impor- [163] tant. There were two acute periods in the money affairs of the receivership, one in February, and one in May. By the latter

(Testimony of William C. McDuffie.)

part of February the condition of the Company was no longer acute because money had been raised to pay the gasoline taxes. I recall testifying this morning that if I had thought there was at any time in the minds of the Wells Fargo Bank the thought that they could take drafts that were deposited there for collection and offset them, or that they were reserving rights against any drafts that were there for collection, that I certainly would have endeavored to take them out. I do not know that that was impossible because my understanding was that certain drafts were there for collection only and were not under that agreement. I understood that it could be done. I doubt very much whether I made inquiry earlier than May of 1931 as to my right to withdraw the drafts because there was never the slightest doubt in my mind that there was any possibility that drafts for collection could be offset, drafts that were not under an agreement —the ordinary drafts.

I don't remember that I ever examined the acceptance agreement in detail. I have not examined it before coming into court today. I know that part of this action rests on the acceptance agreement. I have not studied the matter of the deposit of drafts. The information upon which I base my statement that I never had any idea that the bank could exercise any lien upon these drafts came from various sources. I cannot say exactly. I can only say that I had, myself, become firmly im-

(Testimony of William C. McDuffie.)

pressed with the idea that first of all there was no possibility of the bank asserting any lien against any drafts for collection, and also that the bank had not in its telegram reserved any lien of any character on ordinary collections. At that time I doubt if I had ever read the acceptance agreement. I had never gone in detail into the situation of what drafts were at the Wells Fargo Bank. At the time I received the telegram I have no recollection of consulting my counsel. I don't know when I came to the particular conclusion regarding the lien of the Wells Fargo Bank. It became [164] firmly imprinted in my mind and it was an extraordinary experience to me when the bank exercised it later because I thought there was no possibility of its being done. I do not recall that this matter was actually discussed with any of the banks at the time the telegram was received. I only recall that I read that telegram to some of the bankers and that their examining committee saw the telegram. I have no recollection of any banker asking me, "What is this reservation of the Wells Fargo Bank; what drafts have they?" I have no recollection of any one asking me what these acceptances were. I have received no letter from any banks protesting the action of Wells Fargo Bank & Union Trust Co. in exercising its so-called lien. I received no word from any bank official for the express purpose of discussing that matter.

(Testimony of William C. McDuffie.)

Redirect Examination:

As to the date upon which Wells Fargo Bank undertook to exercise its banker's lien or right of set-off, I had come in contact with some of the representatives of some of the other banks, and I *hav* had discussions with the representatives of some of the other banks who were present at the meeting on January 16, 1931. I have heard some of those bankers voice protests against the action taken by Wells Fargo Bank in attempting to exercise a banker's lien or right of set-off as against the collections of these particular drafts. Every one with whom I have discussed the matter voiced such protest and some of them voiced protests in my hearing and in the hearing and presence of Mr. Ward Sullivan and Mr. Roche. Early in May, I attempted, by cable to the correspondent of the Wells Fargo Bank or to Birla Bros., to revoke the authority of Wells Fargo Bank to collect the proceeds of the Birla Bros. drafts.

At that time I understood and believed that the Birla Bros. drafts were on deposit with the bank merely for the purpose of collection. I did not understand or believe that the Wells Fargo Bank was claiming the right to hold any of those drafts as security under any acceptance agreement. I did not at that time understand or at any time prior thereto understand or believe that any of those drafts that we [165] tried to stop payment on had been deposited with the bank under either any ac-

(Testimony of William C. McDuffie.)

ceptance agreement or for the security of acceptances issued or released by the bank. During the time that I was president of Richfield, I attempted to familiarize myself with its financial affairs and likewise after I became receiver. I likewise attempted to familiarize myself with the obligations owed by the Richfield Oil Company as well as the credits belonging to that company, but I do not remember in what detail I went into it at that time. On the 16th day of January, 1931, I understood that there were drafts in Wells Fargo Bank for collection. I have no specific knowledge regarding the specific drafts that had been deposited with that bank for collection, or the specific drafts that had been deposited with the bank for the purpose of securing the acceptance of them and release by the bank. I knew that some of the drafts were short-term and some long-term. Early in May I was first informed that the long-term drafts were claimed to be held by the bank as security either for acceptances or as having been deposited under an acceptance agreement. I understood that the short-term drafts were being held under the acceptance agreement and that the long-term drafts were being held solely for the purpose of collection.

With respect to this part of my telegram: "It is necessary therefore to request that all banks restore to the receiver full cash balances", the only action that had thus far been taken by any of these banks so far as I was advised was to set off as against the cash balances. I had not been informed that any of the banks had thus far exercised their banker's

(Testimony of William C. McDuffie.)
lien against any of the other assets in their possession belonging to the Richfield Oil Company.

With respect to that part of Plaintiff's Exhibit No. 3, which is the response made by the Bank to my wire of January 16, reading as follows: "We are holding certain collections as security for acceptances. Please understand that we continue to reserve all our rights for bankers lien against these collections", I understood that it referred to such drafts as they were holding as security. [166] I did not understand at that time that this telegram related to any drafts not held by the bank as security and understood by me to be held by the bank merely for the purposes of collection. In May, 1931, when for the first time I attempted to revoke the authority of the bank to make these collections, it was my understanding that the bank merely held these drafts for collection. I know that the Security First National Bank had drafts for collection and that the collections as made were credited to the account of the receiver.

(The foregoing testimony commencing with the words, "With respect to", was objected to by counsel for defendant on the ground it was incompetent, irrelevant and immaterial. Objection was overruled and exception noted.)

During the first year that I was receiver there was never a time when the Richfield Oil Company was not in dire need of cash, and it was necessary for me during that time to get into my possession

(Testimony of William C. McDuffie.)

as quickly as possible all available funds. I cannot remember the exact date when I first learned that the acceptances had been paid in full.

Recross Examination:

I do not recall that I knew that these acceptances were paid at any specific date except when this matter came up and I inquired into it. I am referring to the time when the matter came up in May, 1931. The Security National Bank of Los Angeles did not have any acceptance agreement with Richfield Oil Company to my knowledge. It made no reservations in its telegram or letter of acceptance of my request to restore the cash balances. My understanding is that the Wells Fargo Bank had at the time of my appointment as receiver certain drafts for collection and certain drafts subject to an acceptance agreement and security for certain acceptances. It is not my understanding that there were certain drafts that were deposited and the whole thing was collateral for certain acceptances that were held by the bank. My understanding was that the bank held certain drafts as collateral for certain acceptances pursuant to an acceptance agreement and that it held other drafts for collection. I am sure I would have assumed that pursuant to the acceptance agreement and pursuant to the [167] arrangement between the Richfield Oil Company and the Wells Fargo Bank, the bank had on those certain drafts which were security, not a

(Testimony of William C. McDuffie.)

banker's lien but an actual contractual pledge right. Over a period of time, as I met the representatives of the banks, I mentioned the action of the Wells Fargo Bank to them specifically. I think I spoke both to Mr. Hardacre, Mr. Rude and Mr. Nolan of the Bank of America in Los Angeles, Mr. Page and Mr. Ivey, and I spoke to Mr. Hill representing the American Trust, meeting them casually perhaps at the club, perhaps in the street, or wherever I might see them. I told them and I know that I told them, as it was an important item and I considered that I had a distinct duty toward them and therefore I advised them explicitly in the matter; I considered that not only had Wells Fargo Bank broken faith as far as the receiver was concerned, but it had broken faith with those banks, and I told them that I would pursue to the utmost my endeavor to get that money returned, because I did not think that in any sense of the word Wells Fargo had any right to do it. I explained the situation as best I could, how it all came about. Each one of them protested, not only that they felt there was no right in it, but also that they, themselves, never would have restored their balances had they thought Wells Fargo was reserving in its mind this character of right. I did not show them the telegram, Plaintiff's Exhibit No. 3, when these discussions took place. I did not refer to the reservation of rights in the telegram at the time of these discussions. I made no effort to get the representatives of the banks together as a group and advise them.

(Testimony of William C. McDuffie.)
I advised them of the receipt of the telegram. I heard Mr. Nolan state in court yesterday that he was not so advised.

EDWARD J. NOLAN,

called as a witness for complainant out of order prior to the completion of the testimony of the witness William C. [168] McDuffie, testified as follows:

Direct Examination:

I live in Los Angeles. I have resided there thirty years. I have no business at the present time. The last business in which I was engaged was the banking business. I had been engaged in the banking business twenty-four years. During the month of January, 1931, I was connected with the Bank of America at Los Angeles. My official position was Chairman of the Board. I was president of the Bank of America prior to its consolidation with the Bank of Italy. During the month of January, 1931, I was acquainted with Mr. William C. McDuffie, the receiver of the Richfield Oil Company, and had been acquainted with him for some considerable time prior to that date. I know Mr. Eisenbach, one of the vice-presidents of Wells Fargo Bank & Union Trust Co. I knew him during January, 1931. I had been acquainted with him for quite a few years prior to that date. Prior to January, 1931, I had had discussions with Mr. Eisenbach regarding the affairs of the Richfield Oil

(Testimony of Edward J. Nolan.)

Company. Mr. Eisenbach inquired as to the condition of the Richfield Oil Company and what we thought of its prospects and financial condition. I recall distinctly one occasion; I should say that that was within sixty days prior to the date of the receivership. In January, 1931, the Richfield Oil Company was indebted to the Bank of America in the sum of approximately One Million Four Hundred Thousand Dollars and was indebted to the Bank of Italy for Six Hundred Thousand Dollars, the consolidated amount being when the banks consolidated at Two Million Dollars. That indebtedness was unsecured. Prior to the middle of January, 1931, I was quite familiar with the outstanding unsecured obligations of the Richfield Oil Company, and I conferred with Mr. Eisenbach with respect to those matters.

I was one of the bankers who attended the meeting of January 14, 1931, referred to by Mr. McDuffie as having occurred on the day before his appointment as receiver. Numerous meetings had [169] been held between bankers to whom Richfield Oil Company owed substantial sums of money prior to January 15, 1931. These meetings were held in connection with the outstanding indebtedness for the purpose of protecting banks and the banks' depositors. I recall that Mr. Eisenbach was present at one of those meetings. The bankers were very much concerned about Richfield.

(With respect to the following testimony down to and including the notation of the ob-

(Testimony of Edward J. Nolan.)

jection by defendant and a notation of exception, counsel for complainant offered said testimony for the limited purpose of establishing a waiver and estoppel against defendant with respect to its subsequent right to exercise its alleged bankers' lien and right of setoff and conceded that said testimony would not be binding on defendant except to the extent to which information was afterwards communicated to defendant respecting what occurred at said bankers' meeting.)

At the meeting which occurred on January 16, 1931, there were present Mr. Clark, representing the Continental Bank of Chicago; Mr. Buchanan, representing the First National Bank of Chicago; Mr. Dowling, representing the Chemical National Bank of New York; Mr. L. O. Ivey and Herbert Ivey, representing the Citizens National Bank; James R. Page, representing the California Bank; Carey Hill, representing Tucker Hunter-Dulin, and indirectly the American Trust Company; the Manufacturers Trust Company of New York, Mr. Hardacre and Chester Rude, representing the Security First National Bank of Los Angeles, and myself representing the Bank of America. The Wells Fargo Bank was not represented on that occasion. The bankers were notified to be present at this meeting by Mr. McDuffie. Mr. McDuffie informed the assembled bankers that some of the banks had offset the balances as of the date of the receivership,

(Testimony of Edward J. Nolan.)

and he stated to us that if the company were not to go into bankruptcy it would be necessary for him as receiver to have the necessary cash to meet public utility charges, railroad freight charges and labor charges, and that if the balances that had been off-set were not restored, or if the other banks would not consent not to offset the balances, it would be necessary for the company to file a petition in bankruptcy, or ultimately bankruptcy would result. He said that all the credits and all the funds and all the [170] assets, especially the current assets, that belonged to the company must be turned over to him, otherwise he could not carry on the affairs of the company. I knew in a general way that some of the banks had credits in their possession belonging to the Richfield Oil Company. I was not familiar with the specific amounts of the items. Our bank had accounts in numerous of the branches in California in which there were certain credits belonging to the Richfield Oil Company that were in transit either to the main office in Los Angeles or to the main office in San Francisco. On the day upon which this conference occurred I had no knowledge of the outstanding collections in the possession of my bank. They were quite substantial, scattered throughout California. Our bank received from time to time checks deposited by the Richfield Oil Company of California, received by it in payment of commodities sold outside of California and drawn upon banks outside of California,

(Testimony of Edward J. Nolan.)

and those checks would come in for collection. It was generally understood by all of us that there were outstanding collections in all of the accounts maintained by the Richfield Oil Company in the banks represented at the meeting on the 16th of January, 1931. All of the bankers present who had authority agreed with Mr. McDuffie to restore their balances providing all other banks would do likewise. By balances, I mean items of credit. After that phase of the discussion was concluded, Mr. Ralph Hardacre of the Security First National Bank prepared a telegram. It was subject to comment by all of us. It was finally drafted and Mr. McDuffie called in his secretary in our presence and asked him to transmit the telegrams. Mr. McDuffie himself participated in the preparation of that telegram. The telegram to which I refer is Plaintiff's Exhibit No. 2. I had nothing to do with the transmission of those telegrams. At Mr. McDuffie's request I was to call the Wells Fargo Bank and Mr. Hardacre was to call the Dexter-Horton Bank at Seattle, because they were not present, and acquaint them with what took place at the bankers' meeting that day; after the meeting I put in a call at my office for Mr. Julian Eisenbach of Wells [171] Fargo Bank.

(The foregoing testimony commencing with the words, "At the meeting which occurred", were objected to by counsel for defendant on the ground it was incompetent, irrelevant and

(Testimony of Edward J. Nolan.)

immaterial, and not binding on defendant. Objection was overruled and exception noted.)

During the course of my conversation with Mr. Eisenbach, I stated to him the substance of what had occurred at the meeting of the bankers. I recall explaining to Mr. Eisenbach that unless all of the banks were unanimous in returning the balances that it looked to me as though the company would have to go into bankruptcy; that Mr. McDuffie had stated to us that he had to have certain funds to take care of public utility charges, labor charges and freight charges. Mr. Eisenbach asked me what we intended to do about our balance. I told him we would not offset if the other banks would agree not to offset. He asked me what our balances amounted to and I told him I did not know. He did not say anything as to what his bank would do. I think he said he would have to take it up with Mr. Lipman or take it up with his committee, or words to that effect. That terminated the conversation. At a later date I called Mr. McDuffie on the telephone and asked him if all the banks had agreed. He told me they had agreed and I instructed my Chief Clerk then to reply to Mr. McDuffie's wire. At that time I understood that the Wells Fargo Bank had likewise agreed. We did not exercise any right of setoff.

In giving the instruction to my Chief Clerk not to exercise any right of setoff or a banker's lien I relied on the information I had received that all of

(Testimony of Edward J. Nolan.)

the banks including the Wells Fargo Bank & Union Trust Co. had either restored the balances where the balances had been set off, or had agreed not to set off the balances.

(The foregoing testimony commencing with the words, "In giving the instruction", was objected to by counsel for defendant on the ground that it was the opinion and conclusion of the witness. Objection was overruled and exception noted.)

Cross-Examination:

I communicated with Mr. McDuffie by telephone and asked him if all the banks had agreed to forego their banker's lien. As I recall it, [172] Mr. McDuffie told me that all the banks had agreed. The whole question of agreement between the banks was to restore the cash balances and such items as were in transit. For instance, in our institution there were many items in transit from the branch banks. In referring to cash balances and items in transit, I mean the ordinary items in transit in the banking world—such credits as there may be back and forth, such as checks or collections.

I do not recall that Mr. McDuffie read to me the telegram of the Wells Fargo Bank & Union Trust Co. as to the terms upon which its acceptance was given. I do not recall that he ever told me about that. All that he told me was that the banks had agreed either to restore balances or to forego their banker's liens, and upon that representation I

(Testimony of Edward J. Nolan.)

ordered the Chief Clerk to release the balances in our bank. The first time that I saw that telegram was the time Mr. Roche came to call on me in Los Angeles, within the past week or so.

The telegram to the banks was dictated by all of us and Mr. Hardacre transcribed it or took it down. We were satisfied with the language of the telegram, it being the work of about twelve of us. It was intended to be the agreement between the bankers with some amplification, and I think that is why Mr. McDuffie suggested that we get in touch with Mr. Arnold of Dexter-Horton and Mr. Eisenbach of Wells Fargo. The amplification was not that something was desired besides the telegram itself, but to explain to banks not present the dire condition of the company and the importance and necessity of returning the balances at once, or else the company would be forced to go into bankruptcy.

In my opinion as a banker, drafts for collection in foreign countries are not cash balances. It depends upon the agreement entered into.

Redirect Examination:

I understand balances in a bank would be such items that are deposited for credit and collected, or if there is an agreement with the depositor that one may draw on uncollected items, we sometimes consider that as a balance. I would regard foreign drafts [173] deposited with a bank for collection

(Testimony of Edward J. Nolan.)

as credits, and when the drafts are collected and the money comes into the possession of the bank I would regard that as cash balances. As stated in cross examination, the primary reason for telephoning Mr. Eisenbach was to elaborate upon the wire that was prepared by the bankers in cooperation with Mr. McDuffie and to explain the dire condition of the receivership; that if the balances were not restored or if the bankers' liens were to be exercised by the different banks that it would be necessary for the company to go into bankruptcy. I do not recall that anything was said during the conference between me and Mr. Eisenbach as to the future course of the business. I told Mr. Eisenbach that it would be necessary that the receiver have all the funds of the Richfield Oil Company for the purpose of continuing the business and to avoid bankruptcy. Mr. McDuffie went to great length in explaining to all of us that obligations from day to day arose in the Richfield Oil Company that had to be liquidated in some way. I tried to pass that on to Mr. Eisenbach, I tried to pass on to Mr. Eisenbach just what took place at the meeting that morning. I was subpoenaed as a witness here, but I did not want to come.

Recross Examination:

Foreign drafts can be considered as credits. It depends upon the arrangements between the bank and the depositor. When foreign drafts are collected whether or not they become cash balances

(Testimony of Edward J. Nolan.)

depends upon the agreement. It depends upon the agreement whether they become cash balances on collection and whether they are credits in the course of collection. The ordinary course is that they are immediately deposited to the credit of the company or the customer. In my conversation with Mr. Eisenbach, I went into the question of the necessity of having all the funds of the Richfield Oil Company available to the receiver. I mentioned to him the fact that there were bills outstanding, that there were payrolls to be met, that there were pressing payments to be made on certain definite and unavoidable obligations and that the cash balances in the banks should be made available. I urged very strongly that he agree. [174]

In my conversation with Mr. Eisenbach, I urged that there was at that time an emergency and danger of bankruptcy to Richfield Oil Company if the banks held out the cash balances in the accounts of Richfield. That was the principal part of my conversation.

Further Redirect Examination:

Nothing was said by Mr. McDuffie that if these balances were restored and bankruptcy avoided that the receivership would terminate. He said that he felt sure he could carry on the receivership if these funds were made available and all of the assets of the corporation were turned over to him.

If a draft is deposited in a bank by a depositor

(Testimony of Edward J. Nolan.)

or a merchant for collection, I would regard that as one of his credits. In the absence of any agreement to the contrary, if a foreign draft is deposited with a bank for collection and the bank collects the amount due upon the draft, I would regard that as a credit. When collection is made and the money comes into the possession of the bank, it is a balance due the customer.

Further Recross Examination:

Where drafts are deposited for collection and a loan is made against them, coupled with an express agreement that the drafts are to be security for that loan and every other loan of the drawer, such drafts would not be a credit.

I know nothing of the circumstances of the Richfield Oil Company collections with the Wells Fargo Bank, and I knew nothing about that matter on January 15, 1931. I knew nothing about it on January 16, 1931, when I telephoned to Mr. Eisenbach. The receiver had not told me anything about that in the conference.

HOMER E. POPE,

was then called as a witness by the plaintiff, and testified as follows: [175]

Direct Examination:

I reside in Los Angeles and have resided there approximately seven years. I have worked for the

(Testimony of Homer E. Pope.)

Richfield Oil Company since September, 1929. When first employed by that concern I was a clerk and handled the foreign drafts in the Foreign Department. At that time Mr. Hall was the Manager of the Foreign Exporting Department. I remained connected with that department until November, 1931. I was in the foreign office at the time Mr. McDuffie was appointed receiver. My sole duty was to look after foreign drafts and their collection. I kept track of the foreign drafts to see that they were paid when due and I took care of the details of the financing of foreign shipments and all matters that related to foreign drafts. I did not actually prepare the documents themselves, but they passed through my hands after they were prepared and I looked them over to see that they were correct. As far as I know, Mr. Hall negotiated the foreign sales, and likewise negotiated the terms upon which those foreign sales were made. The Traffic Department took care of the actual preparation of the bills of lading and the items pertaining to the shipment. The drafts were prepared in the Foreign Department and also the letters of transmittal. I kept a complete record of the drafts with the detailed information sufficient to identify each draft and its disposition. I had complete information on each draft concerning whether it was discounted or whether it was deposited with banks for collection. I was likewise required to keep in touch with customers for the

(Testimony of Homer E. Pope.)

purpose of estimating the approximate time when the drafts and documents would be delivered to the customer or when the drafts would be presented for acceptance. It was my understanding that as a general practice the documents, including drafts, went forward on mail boats whereas the cargo went forward on regular cargo boats. It was customary for the drafts and the documents to reach the place of destination of the cargo some days and sometimes some weeks or possibly more than a month in advance of the cargo. Prior to the [176] month of October, 1930, I had not come in contact personally with any of the officials of the Wells Fargo Bank. The first time I met any of the officials of the Wells Fargo Bank in connection with the collection of drafts or the use of drafts by way of security for acceptances was on my trip to San Francisco in the early part of October, 1930. Prior to the early part of October, 1930, the Richfield Oil Company had been doing business insofar as its foreign drafts were concerned with the Security First National Bank of Los Angeles. The custom of the Richfield Oil Company was to deposit some of the drafts for collection and some were discounted.

Very soon after I was employed by the Richfield Oil Company, I became familiar with the fact that commodities and goods were being shipped by Richfield Oil Company to a firm known as Birla Bros. Ltd., Calcutta. Birla Bros. Company was a steady and constant customer of the Richfield Oil Com-

(Testimony of Homer E. Pope.)

pany. Prior to the month of October, 1930, drafts had been drawn on Birla Bros. for acceptance in connection with shipments made to it. Prior to the month of October, 1930, Birla Bros. had never failed to pay a draft to my knowledge.

(The foregoing testimony commencing with the words, "Prior to the month of October, 1930", was objected to by counsel for defendant as incompetent, irrelevant and immaterial. Objection was overruled and exception noted.)

On October 5, 1930, I came to San Francisco with Mr. Hall. In order to enable me to testify in this case, during the past several weeks I have refreshed my recollection by making an examination of records and likewise examining correspondence which came to my attention and under my observation during the history of these transactions.

Before coming to San Francisco, there had come to my attention an acceptance agreement proposed to be entered into between Richfield Oil Company and Wells Fargo Bank. This agreement was in my possession at the time I left Los Angeles. I had obtained the [177] agreement from Mr. Hall some few days before coming to San Francisco. I also had in my possession certain proposed acceptances known as drafts in the aggregate amount of $150,000.00. They were divided into acceptances of various amounts totalling $150,000.00. This acceptance agreement was signed by Mr. McKee and Mr. Hart on behalf of Richfield Oil Company

(Testimony of Homer E. Pope.)

of California. Mr. McKee was Vice President and Assistant to the Chairman of the Board, and Mr. Hart was the Treasurer of Richfield Oil Company.

Plaintiff then offered in evidence the document entitled "Acceptance Agreement". The same was received in evidence and marked Plaintiff's Exhibit 16. Said document was in the words and figures as follows:

"ACCEPTANCE AGREEMENT

(Arising out of importation or exportation of goods)

To WELLS FARGO BANK & UNION TRUST CO.—San Francisco.

Dear Sirs:

We hand you herewith, for acceptance, the following drafts:

Number	Date	Covering following merchandise	Amount
	Oct. 6		$150,000

Marks	Numbers	Description

Payable in San Francisco to the order of Ourselves

It is agreed that the proceeds of the above will be used for financing the actual goods

(Testimony of Homer E. Pope.)

under consideration, and the proceeds of the sale of the goods shall be applied to liquidate the acceptance.

In consideration of your acceptance of the said draft or drafts the undersigned, jointly and severally, agree [178] to pay you at the time of the acceptance a commission of ..... per cent, and further agree to pay you the amount of the said draft or drafts at your office one day before maturity. We waive all liability on your part in case the goods are not according to contract, either in description, quality, or quantity, or in any other respect. All bills of lading, warehouse receipts and other documents of title and all money and goods held by you as security for any such acceptance shall also be held by you as security for any other liability from us to you whether then existing or thereafter contracted and bind ourselves to furnish you prior to ..... with shipping documents covering this merchandise or with exchange arising out of the transaction being financed by the credit.

We further agree to give and furnish you on demand additional security or to make payment on account in amounts and character satisfactory to you. If we fail to comply with any such demand or in case of our insolvency, assignment, bankruptcy, or failure in business, all our obligations and liabilities direct or in-

(Testimony of Homer E. Pope.)

direct to you whether arising hereunder or otherwise shall forthwith become due and payable without demand or notice. All goods represented by bills of lading, warehouse receipts or other documents of title, pledged with you as security for your acceptances hereunder, shall be at all times covered by us by certificates of insurance under open policies to your order or by specific policies payable to you as your interest may appear, to an amount sufficient to cover your advances or obligations hereunder, and you are to have specific claim and lien on such policies and their proceeds to the amount of your interest in the goods thereby insured.

The undersigned hereby consents to any renewal and extension of time of payment of any draft, drafts or other indebtedness that may be granted by you, and do also consent that the securities set forth in said acceptance agreement may be exchanged or surrendered from time to time without notice to or further assent from the undersigned, and that the undersigned will remain bound by this guarantee, notwithstanding such changes, guarantees, renewals and extensions.

Upon our failure to comply with any of the terms hereof or upon the non-payment by us of this or any other liability to you when due

(Testimony of Homer E. Pope.)

or at any other time or times thereafter then in such case all obligations and liabilities direct and contingent from us to you whether arising hereunder or otherwise shall at your election forthwith become due and payable without demand or notice and we hereby give to you full power and authority to sell, assign, transfer and deliver the whole or any part of the securities, bills of lading or documents of title or the goods represented thereby or of any securities substituted therefor or added thereto at any broker's board or at any public or private sale with or without notice or advertisement at your option and do further agree that you may become a purchaser at such sale if at any broker's board or at public auction and hold [179] the property or security so purchased as your own property absolutely free from any claim of or in the right of ourselves. In case of any sale or other disposition of the whole or any part of the security or property aforesaid, you may apply the proceeds of such sale or disposition to the payment of all legal or other costs and expenses of collection, sale and delivery and of all expenses incurred in protecting the security or other property or the value thereof, as hereinafter provided and may apply the residue of such proceeds to the payment of this or of any then existing liabil-

(Testimony of Homer E. Pope.)

ity of ours to you whether then payable or not, returning the overplus to us and in case of any deficiency we agree to pay to you the amount thereof forthwith with legal interest. You may also upon any such non-payment apply the balances of all our deposit accounts in the same way that you are authorized to apply the proceeds of any sale of the security or property hereunder.

You may pay taxes, charges, assessments, liens or insurance premiums upon the security or any part of it, or otherwise protect the value thereof or of the property represented thereby, and may charge against us all expenditures so incurred; but you shall be under no duty or liability with respect to the protection or collection of any security held hereunder or of any income thereon, nor with respect to the protection of preservation of any rights pertaining thereto, beyond the safe custody of such security. We hereby agree that if, in your opinion, the market value of the security hereby or hereafter pledged to secure this obligation, after deducting all charges against the same is at any time less than the amount thereof and————per centum thereof added thereto we will upon demand, deposit satisfactory additional security so that the market value of the security pledged hereunder, after deduct-

(Testimony of Homer E. Pope.)

ing all charges, shall always equal the amount of this obligation plus such additional percentage.

We hereby agree to indemnify you against any liability or responsibility for the correctness, validity, or genuineness of any documents or any signatures or endorsements thereon representing goods which you hold, purchase or sell under this engagement, or for the description, quantity, quality or value of the property declared therein, or of any insurance certificates or policies, and against any general loss or charges or other expenses incurred accruing with respect to such goods through delay in transmission of shipping documents or through any other cause, which charges and other expenses we agree to pay. We further agree that no delay on your part in exercising any right hereunder shall operate as a waiver of such rights or of any right under this obligation.

RICHFIELD OIL COMPANY OF CALIFORNIA

By R. W. McKee

By W. E. Hart

Treasurer

Dated October 4, 1930." [180]

These acceptances dated October 6, 1930, which you show me are the ones which I brought with me to San Francisco. They aggregate $150,000.00.

(Testimony of Homer E. Pope.)

Plaintiff then offered in evidence nine of said acceptances aggregating the sum of $115,000.00, and the same were received in evidence and marked as Plaintiff's Exhibit 17. The reason for separating the acceptances into different exhibits was because at the time of the witness' trip to San Francisco only $115,000.00 worth of them was issued.

Plaintiff then offered in evidence an acceptance dated October 6, 1930, and accepted October 15, 1930, in the sum of $5,000.00, and said acceptance was received in evidence and marked as Plaintiff's Exhibit 18.

Plaintiff then offered in evidence an acceptance dated October 6, 1930, and accepted October 21, 1930, in the sum of $10,000.00, and said acceptance was received in evidence and marked Plaintiff's Exhibit 19.

Plaintiff then offered in evidence three acceptances each dated October 6, 1930, and each accepted on November 28, 1930, two of which were in the sum of $5,000.00, and the third of which was in the sum of $10,000.00, and said acceptances were received in evidence and marked Plaintiff's Exhibit 20.

The total amount of all of said acceptances was the sum of $150,000.00. With the exception of the amounts and dates, each of said acceptances was in the words and figures as follows:

(Testimony of Homer E. Pope.)

$5000

San Francisco, California, October 6, 1930

Ninety (90) Days After Sight

Pay to the Order of OURSELVES

Five Thousand.....DOLLARS

Value received and charge the same to the account of

To

WELLS FARGO BANK & UNION TRUST CO.

Market at Montgomery

11-16

SAN FRANCISCO, CAL.

RICHFIELD OIL COMPANY OF CALIFORNIA

By R. W. McKee

By W. C. Hart

Treasurer" [181]

Except for the date, each of said acceptances was accepted by Wells Fargo Bank & Union Trust Co. in the words and figures following:

"Accepted the 8th day of October, 1930

WELLS FARGO BANK & UNION TRUST CO.

By .....

By ....."

Said witness testified further as follows:

When I delivered the agreement and the acceptances in blank, that is, not accepted by the

(Testimony of Homer E. Pope.)

bank, I obtained a receipt. This receipt dated October 6, 1930, which you show me is the one to which I refer.

Plaintiff then offered in evidence said receipt and the same was received in evidence and marked Plaintiff's Exhibit 21. Said receipt is in the words and figures as follows:

"San Francisco, October 6, 1930. $150,000.00
RECEIVED FROM RICHFIELD OIL COMPANY OF CALIFORNIA One Hundred Fifty Thousand and 00/100 Dollars. Signed and blank endorsed acceptance forms on this bank; all dated October 6, four at $5,000.00 each, eight at $10,000.00 each and two at $25,000.00 each.

WELLS FARGO BANK & UNION TRUST CO.
San Francisco
C. B. CLEMO."

Said witness testified further as follows:

I went to the bank in company with Mr. Hall and upon our arrival we met Mr. Gilstrap who was Assistant Manager of the Foreign Department of the Wells Fargo Bank. We remained with Mr. Gilstrap about an hour or so.

I came up to San Francisco for the purpose of familiarizing myself with the manner in which the collections were to be made by the Wells Fargo Bank, and likewise to learn something about these proposed acceptances. At that time I knew nothing

(Testimony of Homer E. Pope.)

about bank acceptances. Mr. Gilstrap told me how they were handled and what [182] routine would be necessary to go through in the handling of them. As I testified before, the foreign business of the Richfield Oil Company had been handled by the Security Bank in Los Angeles, and there was a desire on the part of Mr. Hall to make a change from the Security Bank to Wells Fargo Bank, and that was one of the purposes of our visit.

Mr. Hall explained to Mr. Gilstrap that he brought me up for the purpose of familiarizing me with the method of handling the bank acceptances. Mr. Gilstrap told me that the release of acceptances would have to be based on drafts, the maturity date of which would be such that the funds would arrive in San Francisco before the maturity date of the bank acceptances.

Upon the occasion of this trip Mr. Hall and I brought no drafts to San Francisco other than the bank acceptances. We brought no drafts representing any foreign shipments.

Mr. Hall explained to Mr. Gilstrap the type of draft in general that we took covering foreign shipments. The discussion was more or less based upon the general character of the drafts customary to each country. Mr. Hall told Mr. Gilstrap that our customers were all good credit risks. Reference was particularly made to one of our customers—Birla Bros. Mr. Hall explained they were one of

(Testimony of Homer E. Pope.)

our best customers; that they purchased a great deal of goods from us and had always been very prompt pay. At that time Mr. Gilstrap told us that the Wells Fargo Bank had made an investigation of Birla Bros. and disagreed with us as to their financial stability. We explained to Mr. Gilstrap our method of drawing on Birla Bros. We told him that we drew on each shipment one-half of the total shipment at sight and the other one-half at 180 days. The question came up as to whether we might base acceptances on both sets of drafts. He told us he would be glad to consider the sight draft but because of the length of time [183] and because of the credit standing, he would not consider the 180 day drafts on Birla Bros. We argued with him that we had never had any trouble with Birla Bros. and that they had always been very prompt pay, and we urged him to let us use the 180 day drafts as a basis for bank acceptances, but he refused.

It was brought out that in the case of foreign drafts the length of time from the receipt of the draft by the bank to the receipt of the proceeds thereof would be longer than the time which appeared on the face of the draft due to the fact that time would be required for the document to go from San Francisco to the foreign country and also for the proceeds to come from the foreign country back to San Francisco. In other words, with respect to the 180 day drafts, we would have to add to the

(Testimony of Homer E. Pope.)

180 days the time it would take the draft to get to the foreign country and the time it would take the proceeds to arrive in San Francisco after the payment of the draft.

Mr. Gilstrap told us that the bank might under some conditions consider 120 day bank acceptances but they were not considered prime paper because of the length of time. I asked him as a matter of information whether it would be possible to utilize the 180 day Birla Bros. drafts as a basis for bank acceptances after a sufficient period had elapsed so that the proceeds might arrive in San Francisco within the 90 day period of prime commercial paper. He told me that it was a possibility only and not to be seriously considered. Mr. Gilstrap told us that a 90 day bank acceptance was best because it was considered prime commercial paper. Mr. Gilstrap told us that he would be glad to take the 180 day paper for collection. He told us that we could not use the 180 day paper to base bank acceptances. He told us that it would be necessary to put up a sufficient amount of drafts in money to cover the bank acceptances. [184] It would only be necessary to have enough from the proceeds of the drafts to cover the bank acceptances to be paid. Mr. Gilstrap expressed a willingness to discount paper, but it was mentioned that the acceptance arrangement would save the company money, and that it was a better way to handle our collections.

(Testimony of Homer E. Pope.)

In about an hour Mr. Leuenberger came out of his office and was introduced to us. Mr. Gilstrap briefly gave Mr. Leuenberger an outline of our previous conversation.

During the course of the conversation Mr. Hall said that he wanted the transactions with the Foreign Department considered a thing apart from the regular transactions of Richfield with the bank. To my knowledge no objection was made at that time to this by Mr. Gilstrap.

> (Objection was made by counsel for defendant to the foregoing testimony commencing with the words, "During the course of the conversation," on the ground that it tended to vary the terms of the acceptance agreement. Objection was overruled and exception noted.)

In the course of the conversation, it was said that in the event the proceeds of the drafts placed under the acceptances might not be sufficient to meet the acceptances when they matured, it would be necessary for the Richfield Oil Company to send Wells Fargo Bank a check to cover the deficiency.

I was familiar with the correspondence passing between the Wells Fargo Bank and Richfield Oil Company with respect to these transactions and I was familiar with the letters of transmittal to the bank that accompanied the drafts, documents, etc. I kept a record of all receipts and collections and advices by the bank respecting the payment of the

(Testimony of Homer E. Pope.)

proceeds of the drafts and the application of the proceeds.

At the time of our visit to San Francisco on the 5th of October, 1930, a shipment was being prepared for Birla Bros. and after we returned to Los Angeles the papers, documents and drafts covering that shipment were prepared. On October 7th, these papers were finally turned over to Mr. Hall. We returned to Los Angeles [185] on the night of October 6th, and on the night of October 7th Mr. Hall went back to San Francisco, and he brought with him to San Francisco the documents, drafts and letters of transmittal respecting this shipment to Birla Bros. The copy of the letter addressed to Wells Fargo Bank and the copies of the drafts and of the invoices which you are showing me are copies of the documents which were turned over to Mr. Hall to bring back. The copy of another letter dated October 7, 1930, likewise addressed to Wells Fargo Bank, and the drafts and invoices are likewise copies of another letter and documents pertaining thereto that were turned over to Mr. Hall on that date. These copies of the two transmittal letters, of the drafts and of the invoices are carbon copies and true and correct copies of the originals which accompanied the original letter sent to the Wells Fargo Bank.

Plaintiff then offered in evidence copies of the first transmittal letter and accompanying drafts hereinbefore referred to, and the same were re-

(Testimony of Homer E. Pope.)

ceived in evidence and marked Plaintiff's Exhibit 22. Said documents were in the words and figures following:

"October 7, 1930.

Wells Fargo Bank and Union Trust Company,
Market at Montgomery,
San Francisco, California.

Subject: Drafts #103004 and #103005,
Birla Brothers, Ltd. M/S 'SILVER HAZEL'

Gentlemen:

We are enclosing the following enumerated documents covering shipment going forward to Calcutta, India per the M/S 'SILVER HAZEL':

1—Our Draft #103004 amounting to $63,-950.00 drawn at sight on Birla Brothers, Ltd.

2—Our Draft #103005 amounting to $63,-950.00 drawn at 180 days sight on Birla Brothers, Ltd.

3—Our Invoice #930112 in the amount of $127,900.00.

4—Insurance Policy in triplicate.

5—Three originals Bill of Lading.

Provided these documents are found to be in order, please forward them to your correspondent bank at Calcutta, requesting them to notify you immediately by wire of non-acceptance or non-payment of Draft at maturity. [186]

(Testimony of Homer E. Pope.)

Thanking you, we remain

Yours very truly,

RICHFIELD OIL COMPANY
OF CALIFORNIA

FDS-W B. D. Blanchard,
enc Assistant Manager,
CC to Homer Pope Foreign Department.

$63,950.00 Los Angeles, California
October 8th, 1930

At 180 days sight—documents against acceptance of this first of exchange (second unpaid) pay to the order of Richfield Oil Company of California Sixty-Three Thousand Nine Hundred Fifty and—No/100 Dollars with Exchange Stamp Tax and all Collection Charges Value received and charge to account of E. O. 1005, Inv. 930112, M/S 'Silver Hazel'
To Birla Brothers, Ltd., Richfield Oil Company of California, Calcutta.
No. 103005 India By

$63,950.00 Los Angeles, California
October 8th, 1930.

At sight of this first of exchange (second unpaid) pay to the order of Richfield Oil Company of California Sixty-Three Thousand Nine Hundred Fifty and No/100 Dollars with exchange, Stamp Tax and all Collection Charges

(Testimony of Homer E. Pope.)

Value received and charge to account of E. O. 1005, Inv. 930112 M/S 'Silver Hazel'

To Birla Brothers, Ltd.
Calcutta
No. 103004 India

RICHFIELD OIL COMPANY
OF CALIFORNIA
By ”

Plaintiff then offered in evidence copies of the second transmittal letter and accompanying drafts hereinbefore referred to, and the same were received in evidence and marked as Plaintiff's Exhibit 23. Said documents were in the words and figures as follows:

“October 7, 1930

Wells Fargo Bank and Union Trust Company,
Market at Montgomery,
San Francisco, California.

Subject: Drafts #103006-A and #103006-B,
Birla Brothers, Ltd. M/S
'Silver Ray'

Gentlemen:

We are enclosing the following documents covering shipments going forward to Calcutta and Bombay, per the M/S 'Silver Ray':

1—Our Draft #103006-A amounting to $55,-900.76 drawn at sight on Birla Brothers, Ltd. at Calcutta. [187]

2—Our Draft #103006-B amounting to $55,-900.75 drawn at 180 day sight D/A on Birla Brothers, Ltd. at Calcutta.

(Testimony of Homer E. Pope.)

3—Three copies of our Invoice #103009 amounting to $2,482.08.

4—Three copies of our Invoice #930114 amounting to $24,228.00.

5—Insurance Policy in triplicate covering drums.

6—Insurance Policy in triplicate covering cases.

7—Three originals Bill of Lading.

8—Our Invoice #103008 amounting to $69,000.

9—Our Invoice #103007 amounting to $16,-091.43.

10—Insurance Policy in triplicate covering drums.

11—Insurance Policy in triplicate covering cases.

12—Three originals Bill of Lading.

Provided these documents are found to be in order, please forward them to your correspondent bank for collection, requesting them to notify you immediately by wire of non-acceptance or non-payment of Draft at maturity.

Thanking you, we remain

Yours very truly,

RICHFIELD OIL COMPANY OF CALIFORNIA

FDS-W

enc

CC to Homer Pope

B. D. Blanchard,

Assistant Manager,

Foreign Department."

(Testimony of Homer E. Pope.)

"$55,900.76 Los Angeles, California
October 8th, 1930.

At sight of this first of exchange (second unpaid) pay to the order of Richfield Oil Company of California Fifty-Five Thousand Nine Hundred and 76/100 Dollars with exchange, Stamp Tax and all Collection Charges

Value received and charge to account of E. O. 1005-6-7-56, Inv. 930114, 103007-8-9, M/S 'Silver Ray'

To Birla Brothers, Ltd.,
Calcutta,
No. 10300-A India.

RICHFIELD OIL COMPANY
OF CALIFORNIA
By ,,

"$55,900.75 Los Angeles, California
October 8th, 1930.

At 180 days sight—documents against acceptance of this first of exchange (second unpaid) pay to the order of Richfield Oil Company of California Fifty-Five Thousand Nine Hundred and 75/100 Dollars with exchange, Stamp Tax and all Collection Charges. [188]

Value received and charge to account of E. O. 1005-6-7-56. Inv. 930114, 103007-8-9, M/S 'Silver Ray'.

To Birla Brothers, Ltd.
Calcutta,
No. 103006-B India.

RICHFIELD OIL COMPANY
OF CALIFORNIA
By

(Testimony of Homer E. Pope.)

Said witness testified further as follows:

We kept records in our office showing receipts issued by Wells Fargo Bank for drafts delivered to it. The document which you have just shown me is a receipt for drafts deposited with Wells Fargo Bank to date of the receipt. The drafts shown upon the transmittal letters just introduced in evidence are mentioned in this receipt. There are also some additional drafts which were transmitted by Richfield Oil Company to the bank between October 7, 1930, and the date of the receipt.

Plaintiff then offered in evidence the receipt mentioned and the same was received in evidence and marked Plaintiff's Exhibit 24. Said receipt was addressed to Richfield Oil Company of California, attention of Homer E. Pope, was signed by Wells Fargo Bank & Union Trust Co., and dated October 14, 1930. Said document acknowledged receipt of the four drafts hereinabove set forth in Exhibits 22 and 23, as well as several other drafts not yet in evidence.

The witness' attention was then directed to a document consisting of three sheets, the first of which was entitled "Richfield Oil Company of California, William C. McDuffie, receiver; drafts deposited for collection with Wells Fargo Bank & Union Trust Co., San Francisco, from inception to January 15, 1931."

Said witness testified further as follows:

(Testimony of Homer E. Pope.)

This document was prepared under my direction and to the best of my knowledge and belief, those tabulations are correct.

(Counsel for plaintiff here stated that defendant was not to be bound by any of the headings or titles on said table. Said document was marked Plaintiff's Exhibit 25 for identification. Said document was later, on the cross examination of said witness, introduced in evidence as Plaintiff's Exhibit 25, merely for the purpose of illustration and as a tabulation by which defendant is not bound.) [189]

With reference to the first column of the first page of Plaintiff's Exhibit No. 25 for identification, the names of the customers appear under the title "Customer". In the next column, under the title "Draft No." appears the numbers of the drafts drawn on the customers. In the third column, under the title "Amount" appears the amount of the face of the draft. In the fourth column under the title "Date deposited" appears the date the draft was deposited in the bank. In the next column, under the title "Due Date in Foreign Country" appears the date the draft is due or expected to be due in the foreign country. In the next column, under the title "Date Paid" appears the date upon which the draft was paid in San Francisco. The asterisks or stars in red refer to drafts, the proceeds of which were withheld by

(Testimony of Homer E. Pope.)

defendant bank. The second page of the document is a continuation of the information set forth on the first. Upon this appears the total of the drafts as to which the bank claims a lien, namely $145,980.80. The total amount of other drafts is set forth as $197,390.59. The total of these two figures is $343,371.39. With reference to the deposit date appearing on the face of the schedule, a note appears thereon reading as follows: "Date of deposit as shown above is date mailed to San Francisco; papers actually deposited in bank one day later". Referring to the third page, which is entitled "Richfield Oil Company of California, William C. McDuffie Receiver; Statement of Bank Acceptances Issued for the Account of Richfield Oil Company of California by Wells Fargo Bank & Union Trust Co., San Francisco, and Payments Thereof by Application of Draft Collections", the first column represents the date on which the acceptances were released, the second column represents the amount and the third column represents the due date of each acceptance. Of the last three columns under the general heading "Payment by Application of Drafts", the first column represents the date, the second column the amount and the third column the draft numbers, and the total is $155,000.00. [190]

Other drafts were sent up to the bank from time to time. After the acceptances were accepted by the bank they were released by the bank and

(Testimony of Homer E. Pope.)

immediately thereafter a credit was given to the Richfield Oil Company for the disposition price of those acceptances. I dictated the letter, a carbon copy of which you are calling to my attention, dated October 13, 1930, said letter having been signed by Mr. Lyons of Richfield Oil Company and being addressed to the bank. Mr. Lyons was the Comptroller of Richfield Oil Company.

The two carbon copies of two letters of transmittal and the drafts attached thereto, dated October 8, 1930, and October 9, 1930, are accurate copies of the originals, and were sent to the Wells Fargo Bank upon their respective dates together with the documents referred to therein.

Plaintiff then offered in evidence said copy of said letter dated October 8, 1930, with a copy of the draft attached, and said letter and copy of draft were received in evidence and marked Plaintiff's Exhibit 26. Said letter is in the words and figures as follows:

"October 8, 1930

Wells Fargo Bank and Union Trust Company,
Market at Montgomery,
San Francisco, California.

Subject: Draft #103009—Ricardo Velazquez,
SS 'Sarramacca'

Gentlemen:

We are enclosing the following documents covering shipment of 200 drums of gasoline going forward to Buenaventura, Colombia per the

(Testimony of Homer E. Pope.)

SS 'Sarramacca', for the account of Ricardo Velazquez, Cali, Colombia:

1—Our Draft #103009 amounting to $2,442.40 drawn at 60 days sight D/A on Ricardo Velazquez, Cali, Colombia.

2—Three copies our Invoice #103006 amounting to $2,442.40.

3—Three copies Packing List.

4—Consular Invoice. [191]

5—Insurance Policy in triplicate.

6—Three originals Bill of Lading.

Provided these documents are found to be in order, please forward them via Airmail to Banco Aleman Antiqueno at Cali, Colombia, for collection, requesting them to advise you by wire immediately of non-acceptance or non-payment of Draft at maturity.

Thanking you, we remain

Yours very truly,
RICHFIELD OIL COMPANY
OF CALIFORNIA."

Plaintiff then offered in evidence said copy of said letter dated October 9, 1930, and said letter was received in evidence and marked Plaintiff's Exhibit 27. Said letter is in the words and figures as follows:

(Testimony of Homer E. Pope.)

"October 9, 1930
Registered Mail
Special Delivery

Wells Fargo Bank and Union Trust Company,
Market at Montgomery,
San Francisco, California.

Subject: Draft 103010—Bettiger Trepp y Cia, SS 'Sarramacca'

Gentlemen:

We are enclosing the following enumerated documents covering shipment going forward to the Port of Arica per the SS 'Sarramacca' for the account of Messrs. Bottiger Trepp y Cia of La Paz, Bolivia:

1—Our draft #103010 amounting to $11,-031.14 drawn at sight D/A on Bottiger Trepp y Cia of La Paz, Bolivia.

2—Three copies our Invoice #103016 amounting to $1,130.06.

3—Three copies our Invoice #103017 amounting to $212.00.

4—Three copies Packing List.

5—One copy Certified Commercial Invoice.

6—One copy Consular Invoice.

7—Duplicate and triplicate Insurance Policy.

8—Second and third original Bill of Lading.

9—Three copies our Invoice #103012 amounting to $5,643.80. [192]

10—Three copies our Invoice #103013 amounting to $2,544.00.

(Testimony of Homer E. Pope.)

11—Three copies Packing List.
12—One copy Certified Commercial Invoice.
13—One copy Consular Invoice.
14—Duplicate and triplicate Insurance Policy.
15—Second and third originals Bill of Lading.
16—Three copies our Invoice #103015, amounting to $1501.28.
17—One certified Commercial Invoice.
18—Duplicate and triplicate Insurance Policy.
19—Second and third originals Bill of Lading.

The original of each certified Commercial Invoice, Consular Invoice, Insurance Policy and Bill of Lading have been sent via Airmail direct to Dauelsberg & Co. at Arica, in order that they may clear through the customs without delay or fine.

You will also note that the copy of the Consular Invoice covering 650 cases Gasoline, as per our Invoice #103015, is missing. We are having copy of this document made and will forward it to you as quickly as it is received.

Provided these documents are found to be in order, please forward them for collection, via Airmail, to Banco de la Nacion Boliviana at La Paz, requesting them to notify you by wire if the Draft is not paid promptly.

Thanking you, we remain,

Yours very truly,
RICHFIELD OIL COMPANY
OF CALIFORNIA."

(Testimony of Homer E. Pope.)

Plaintiff then offered in evidence the original of said letter dated October 13, 1930, and said letter was received in evidence and marked Plaintiff's Exhibit 28. Said letter was in the words and figures as follows:

"October 13, 1930

Wells Fargo Bank and Union Trust Company,
Market at Montgomery,
San Francisco, California.

Gentlemen:

Attention: Mr. Gilstrap,
Assistant Cashier.

Our records show that we have with your good bank a draft reserve of $9,734.16 against which no acceptances have been issued. [193]

If this information is correct, please issue one of the drafts which you now hold, for $5,000.00, payable in ninety days.

Thanking you for your courtesy in this matter,

Yours very truly,
G. P. LYONS, Comptroller."

Plaintiff then offered in evidence a carbon copy of letter dated October 15, 1930, from Wells Fargo Bank & Union Trust Co. to the Richfield Oil Company of California, Los Angeles, California, and said copy of said letter was received in evidence and marked Plaintiff's Exhibit 29. Said letter was in the words and figures as follows:

(Testimony of Homer E. Pope.)

"October 15, 1930

Richfield Oil Company of California,
555 South Flower Street,
Los Angeles, California.

Gentlemen: Attention Mr. H. E. Pope.

In accordance with your letter of October 13, we have been very pleased to execute an acceptance for $5,000. at 90 days sight. This draft matures January 31, 1931.

Your account has been credited with $4962.50, representing proceeds, particulars as follows:

Amount		$5,000.00
Discount 90 days @ 2%	$25.00	
Commission 1% p.a.	12.50	37.50
		$4,962.50

You mention that you have a draft reserve with us for $9,734.16. This figures covers the amount of your drafts Nos. 103009 and 103012 and the balance remaining on your Nos. 103006A and 103004, but evidently does not take into consideration your draft No. 103110 drawn on La Paz, Bolivia, for $11,031.14.

Awaiting your further requests, we are,

Yours very truly,

Assistant Cashier."

The witness' attention was then called to figures appearing upon a blackboard, and said witness testified therefrom as follows:

(Testimony of Homer E. Pope.)

Draft No. 103004 in the sum of $63,950. is one of the sight drafts on the two shipments to Birla Bros. disclosed by letters of [194] transmittal dated October 7, 1930. The same situation is true in respect to Draft 103006-A in the sum of $55,900.76. The other two drafts were 180 day drafts. The total of the two sight drafts was $119,850.76. The acceptances that were accepted and released aggregate $115,000.00. Deducting the $115,000.00 from the $119,850.76, a balance of $4,850.76 is left, based entirely and exclusively upon the two sight drafts and exclusive of the 180 day drafts. Between October 8, 1930, and October 13, 1930, draft No. 103009, in the sum of $2,442.40 was mailed on October 8, 1930, to Wells Fargo Bank & Union Trust Co., and a draft No. 103010, for $11,031.14, was mailed on October 9, and on October 11, draft No. 103012 for $2,441, was mailed. The total of these two small drafts, $2,442.40, and $2,441.00, plus the difference between $115,000.00 and $119,850.76, makes $9,734.16. That was the figure which was mentioned by me in my letter requesting the issuance to the Richfield Oil Company of an acceptance for $5,000.00. In the meantime, we had sent up the draft for $11,031.15. After receiving the letter of October 15, 1930, from Wells Fargo Bank & Union Trust Co. calling our attention to this additional draft, we sent a letter to the Wells Fargo Bank in response to said letter of October 15. Said letter was dictated by me.

(Testimony of Homer E. Pope.)

Plaintiff then offered in evidence a letter dated October 20, 1930, and said letter was received in evidence and marked Plaintiff's Exhibit 30. Said letter was in the words and figures as follows:

"October 20, 1930

Wells Fargo Bank and Union Trust Company,
Market at Montgomery,
San Francisco, California.

Dear Sir: Attention: Mr. E. Leuenberger,
Asst. Vice President. [195]

In talking with Mr. Gilstrap Saturday, he informed us that we might use our collection number 103010, your number 46843, on La Paz, Bolivia, as reserve against acceptances. Under these circumstances, would you please issue an acceptance for $10,000.00 to mature in 90 days.

In your letter of October 15th to our Mr. Pope, the due date on a $5,000.00 acceptance was given as January 31, 1931. We are in doubt as to whether this date is correct or whether it should have been January 13, 1931, since it is a 90 day acceptance. Will you please set us straight on this matter.

Your courtesy in this matter is appreciated.

Yours very truly,
G. P. LYONS, Comptroller."

The acceptance for $10,000 which we requested the bank in the letter of October 20 to issue was

(Testimony of Homer E. Pope.)
the acceptance based upon the La Paz draft for $11,031.14. We received a letter in response to our letter of October 20, 1930.

Plaintiff then offered in evidence a letter dated October 21, 1930, and said letter was received in evidence and marked Plaintiff's Exhibit 31. Said letter is in the words and figures as follows:

"October 21, 1930.

Richfield Oil Company of California,
555 South Flower Street,
Los Angeles, California.

Gentlemen:

In accordance with your letter of October 20, we executed 90 days acceptance for $10,000.00 and credited your account with the proceeds, $9925.00, as per credit memorandum herewith.

This acceptance will fall due January 19, 1931.

We have ear-marked same against your collection No. 46843 on La Paz, Bolivia.

Regarding acceptance of $5,000.00 advised in our letter of October 15: The maturity date should be January 13, 1931, and not January 31, 1931, as previously advised. Kindly pardon this oversight.

Yours very truly,

Assistant Vice President."

The credit memorandum shows the $10,000.00 acceptance executed. The discount was $50.00; the

(Testimony of Homer E. Pope.)

commission was $25.00, making a total of $75.00 and a credit of the proceeds of said $10,000.00 acceptance in the sum of $9925.00. [196]

Upon accepting these two subsequent acceptances the bank had accepted $130,000 of acceptances. I recall that a memorandum showing the issuance of the $10,000 acceptance had not been received. I wrote a letter to the bank with respect thereto, and received a response. This carbon copy of a letter written by me to the bank and the original letter received from the bank is the correspondence upon this subject.

Plaintiff then offered in evidence said letters and the same were received in evidence and marked Plaintiff's Exhibit 32. Said letters are in the words and figures as follows:

"October 27, 1930.

Wells Fargo Bank and Union Trust Co.,
Market at Montgomery Street,
San Francisco, California.

Attention—Mr. W. J. Gilstrap,
Assistant Cashier.

Dear Sir:

On October 20th our Mr. Lyons wrote you in regard to issuing an additional acceptance for $10,000.00 to mature in ninety days.

We have not received an advice of this acceptance, and are wondering if the letter has gone astray.

(Testimony of Homer E. Pope.)

Thanking you for your kidness in this matter, I am,

Yours very truly,
RICHFIELD OIL COMPANY
OF CALIF."

October 28, 1930.

Richfield Oil Company of California,
Los Angeles, California.

Gentlemen: Attention Mr. H. E. Pope.

Your letter of October 27 is received.

Apparently our letter of October 21, a copy of which we enclose, has gone astray. You will note that on that date we credited your account with $9925.00, representing proceeds of acceptance drawn for $10,000.

Statement showing details of discount is also enclosed.

Yours very truly,
W. J. GILSTRAP, Assistant Cashier."

I prepared a letter dated November 24, 1930, to the Wells Fargo Bank & Union Trust Co. [197]

Plaintiff then offered said letter in evidence and the same was received in evidence and marked Plaintiff's Exhibit 33. Said letter is in the words and figures as follows:

"November 24, 1930.

Wells Fargo Bank and Union Trust Company,
Market at Montgomery Street,
San Francisco, California.

Gentlemen:

Please issue for our account acceptances in the amount of $25,000.00. The enclosed accept-

(Testimony of Homer E. Pope.)

ance for $5,000.00, in addition to those you now hold for our account amounting to $20,000.00, will make up this total.

Will you be kind enough to issue these acceptances as of November 28th. This will give a reasonable allowance for delays in the remittance of draft payments.

Your courtesy is very much appreciated.

Yours very truly,

RICHFIELD OIL COMPANY
OF CALIFORNIA
G. P. Lyons, Comptroller."

There had already been issued $130,000.00 of acceptances and this $25,000.00 had increased the acceptances to $5,000.00 above the $150,000.00 specified in the acceptance agreement so I inclosed a draft to be accepted by the bank for $5,000.00.

Said witness testified further as follows:

I recall the telegram sent to Mr. Hall by Wells Fargo Bank & Union Trust Co. announcing that the Birla sight draft had been paid.

Plaintiff then offered in evidence said telegram and the same was received in evidence and marked Plaintiff's Exhibit 34. Said telegram was in the words and figures as follows:

"San Francisco Calif
26 927A 1930 Nov 26 AM 9 41

R. L. Hall
Richfield Oil Co of Calif

Our Calcutta correspondents state both Birla sight drafts Pd

WELLS FARGO BANK AND
UNION TRUST CO."

(Testimony of Homer E. Pope.)

Said witness testified further as follows:

I recall having received a letter from Wells Fargo Bank under date of November 28, 1930, stating that they had executed acceptances in the sum of $25,000.00. [198]

Plaintiff then offered in evidence a carbon copy of said letter and the same was received in evidence and marked Plaintiff's Exhibit 35. Said letter was in the words and figures as follows:

"November 28, 1930.

Richfield Oil Company of California,
Los Angeles, California.

Gentlemen: Attention Mr. H. E. Pope.

We refer to your letter of November 24 and our telephone conversation today.

In accordance with your request, we have executed acceptances in the amount of $25,000. and credited your account with $24,812.50, particulars as follows:

Amount of acceptances		$25,000.00
Discount 90 days @ 2%	$125.00	
Commission 1% p.a.	62.50	187.50
		$24,812.50

These acceptances mature February 26, 1931.

Yours very truly,

Assistant Cashier."

Said witness testified further as follows:

We received a letter from Wells Fargo Bank dated November 29, 1930.

(Testimony of Homer E. Pope.)

Plaintiff then offered in evidence said letter and the same was received in evidence and marked Plaintiff's Exhibit 36. Said letter is in the words and figures as follows:

"November 29, 1930.

Richfield Oil Company of California,
Los Angeles, California.

Gentlemen: Attention Mr. R. L. Hall.

In connection with your drafts Nos. 103006-A and 103004 on Birla Bros. Ltd. for $55,900.76 and $63,950.00, respectively, we confirm having had exchange of cables as follows:

Sent Nov. 25—'Cable status our collections 46831 and 46833 October eighth.'

Recd. Nov. 26—'Refer to your wire 25th of this month Both collections paid.'

Sent Nov. 26—'Our Calcutta correspondents to you state both Birla sight drafts paid.' [199]

For the cost of the above messages, we have debited your account with $8.76, as per enclosed memorandum.

Yours very truly,

E. LEUENBERGER,
Assistant Vice-President.
Assistant Cashier."

Said witness testified further as follows:

After the acceptance of the additional $5,000.00 draft, making in all $155,000 worth of acceptances, a request was made upon us by Wells Fargo Bank

(Testimony of Homer E. Pope.)

& Union Trust Co. for an additional acceptance agreement to cover the extra $5,000.

Plaintiff then offered in evidence a letter dated December 1, 1930, from Wells Fargo Bank & Union Trust Co. to Richfield Oil Company of California, and a letter from Richfield Oil Company of California to Wells Fargo Bank & Union Trust Co. dated December 3, 1930, and said letters were received in evidence and marked Plaintiff's Exhibit 37. Said letters are in the words and figures as follows:

"December 1, 1930.

Richfield Oil Company of California,
555 South Flower Street,
Los Angeles.

Gentlemen: Attention: Mr. H. E. Pope.

As your Acceptance Agreement covering the execution of acceptances by us against your documentary export bills calls for $150,000, we are enclosing another agreement for $5,000, to cover the acceptance for this amount executed by us November 28, in accordance with your letter of November 24.

Please sign and return this form to us.

Yours very truly,
C. B. CLEMO, Assistant Cashier."

(Testimony of Homer E. Pope.)

"December 3, 1930.

Wells Fargo Bank & Union Trust Co.
Market at Montgomery St.,
San Francisco, California.

Foreign Department—
Attention Mr. C. B. Clemo

Dear Sir: [200]

As requested in your letter of December 1st, we are enclosing the Acceptance Agreement which you asked for. You will notice that we have not dated the signatures. This was purposely done because we did not know whether the date should be the same as the acceptances or the actual date signed. The signatures were placed on this agreement December 2nd.

In the future we will forward these agreements with the acceptance issued.

Yours very truly,
RICHFIELD OIL COMPANY
OF CALIFORNIA."

Plaintiff then offered in evidence said acceptance agreement and the additional acceptance in the sum of $5,000 and the same were received in evidence and marked Plaintiff's Exhibits 38 and 39 respectively. Said acceptance agreement was exactly the same as that which was introduced in evidence and marked Plaintiff's Exhibit 16 with the exception that it was in the amount of $5,000 and dated November 28, 1930. Said acceptance in the sum of $5,000 was in the same form as those offered

(Testimony of Homer E. Pope.)

in evidence and marked Plaintiff's Exhibits 17, 18, 19 and 20.

Said witness testified further as follows:

The significance of the draft number on the drafts is that the first two figures indicate the month, the next two figures the year, and the last two the number of the draft drawn in the particular month. Thus Draft 103004 was the fourth draft drawn in October, 1930.

In my conversation with Mr. Gilstrap it was agreed that the acceptances were to be issued in multiples of $5,000.00. In other words, the minimum acceptance would be $5,000.00 and if acceptances were issued in excess of $5,000.00 they would have to be for $10,000.00, $15,000.00, $20,000.00 or $25,000.00. On October 8, 1930, $115,000.00 worth of acceptances were released by the bank. The two sight drafts, not taking into consideration the 180 day drafts which the bank refused to take, aggregated $119,850.76, one being for $63,950.00, and the other being for $55,900.76. Deducting the face value of the acceptances, to-wit, $115,000.00, from the [201] gross face value of the two drafts aggregating $119,850.76, left a surplus of $4850.76. In view of the fact that the minimum acceptance would have to be $5,000.00, no acceptance could be issued against that surplus of $4850.76. At the time Mr. Hall and I went to San Francisco and visited the bank, which was on October 6, 1930, we desired to obtain as many acceptances as were possible under

(Testimony of Homer E. Pope.)

the drafts and the maximum amount then obtainable was $115,000.00. We subsequently sent to San Francisco two drafts, one numbered 103009 for $2442.40, the other being numbered 103012 for $2441.00, making an aggregate which, together with the surplus on hand represented by the two large sight drafts mentioned, aggregated $9734.16. After we had mailed to the bank our letter of October 13, 1930, Plaintiff's Exhibit 28, the bank sent its response and issued a $5,000.00 acceptance, accepted October 15, 1930, which is Plaintiff's Exhibit No. 18. The draft referred to in the letter as numbered 103110 is incorrect. It should be 103010.

Plaintiff then offered in evidence a number of transmittal letters and drafts, and receipts of the Wells Fargo Bank & Union Trust Co. for said drafts, and said documents were received in evidence and marked Plaintiff's Exhibits 40 to 92 inclusive. Said transmittal letters were in identically the same form as those hereinabove set forth and marked Plaintiff's Exhibits 22, 23, 26 and 27, and covered drafts drawn upon various foreign customers of the Richfield Oil Company. The drafts were all in comparatively small amounts with the exception of that contained in Plaintiff's Exhibit 82, and were all drawn either at sight or for periods not in excess of sixty days, with the exception of that contained in Exhibit 82. All of said drafts were in substantially the same form as those hereinabove set forth as parts of Plaintiff's Exhibits

(Testimony of Homer E. Pope.)

22, 23, 26 and 27. Plaintiff's Exhibit 82 was a transmittal letter in the same form as [202] those hereinabove set forth and marked Plaintiff's Exhibits 22 and 23, and covered a sight draft drawn on Birla Bros. Ltd., Calcutta, India, in the sum of $11,107.50, and a time draft drawn at 180 days sight on Birla Bros. Ltd., Calcutta, India, in the sum of $23,607.50. These drafts contained in said Exhibit 82 were in substantially the same form as those hereinabove set forth as parts of Plaintiff's Exhibits 22 and 23. All of said transmittal letters with the exception of that contained in Plaintiff's Exhibit 52 requested Wells Fargo Bank & Union Trust Co. to forward the drafts to the bank's correspondent for collection. The transmittal letter in said Exhibit 52 omitted the words "for collection". Said transmittal letters and drafts were those which were deposited by Richfield Oil Company of California with Wells Fargo Bank & Union Trust Co. from October 9, 1930, until January 14, 1931. The receipts hereinabove mentioned were acknowledgments on the part of Wells Fargo Bank & Union Trust Co. of the deposit of the drafts above mentioned. The following is a list of the drafts covered by the Exhibits last mentioned:

(Testimony of Homer E. Pope.)

Exhibit No.	Date Deposited	Draft No.	Customer	Amount	Time
	1930				
40	Oct. 11	103012	Bueno y Cia	$2441.00	60 days
42	" 27	103024	A. S. Clark	1007.00	60 "
43	" 20	103023	Sociedad Automovilia	779.10	60 "
45	" 27	103025	Nottebohm Hermanos	583.00	sight
47	" 27	103027	Sociedad Automovilia	381.60	60 days
48	" 27	103028	Plesch y Cia	1204.78	sight
49	" 27	103026	Alvarez e Hyos.	2446.82	30 days
50	" 28	103029	Nissho Co. Ltd.	654.55	30 "
52	" 29	103030	Empresa Dean	1405.20	60 "
53	Nov. 5	113001	Limon Trading Co.	1208.40	60 "
55	" 18	113007	Plesch y Cia	1204.78	sight
57	" 18	113008	A. S. Clark	1007.00	60 days
58	" 18	113009	Limon Trading Co.	5256.60	60 "
59	" 19	113010	J. C. Spedding	1804.01	30 "
60	" 19	113011	Nottebohm Hermanos	103.12	sight [203]
61	" 19	113012	Boetteger Trepp y Cia	$1466.25	sight
62	" 21	113013	Alvarez e Hijos	2466.82	30 days
63	" 21	113014	Nissho Co.	1547.50	sight
64	" 21	113017	J. C. Spedding	7237.35	30 days
65	" 22	113018	Miguel Duevar	641.25	sight
66	" 24	113019	Nottebohn Hermanos	291.50	"
71	" 24	113020	Raymundo Diaz	1200.00	"
72	" 24	113021	Empresa Dean	2237.66	60 days
73	" 27	113023	Nissho Co.	881.13	30 days
74	Dec. 22	123007	A. S. Clark	1007.00	60 "
75	" 23	123008	Alvarez e Hijos	2446.82	30 "
76	" 23	123009	Limon Trading Co.	3418.90	60 "
77	" 23	123010	Empresa Dean	1266.29	60 "
78	" 27	123013	J. C. Spedding	2702.66	30 "
79	" 27	123014	Ricardo Velazquez	1219.00	60 "
80	" 27	123015	Botteger Trepp y Cia	2692.99	sight
	1931				
81	Jan. 8	13103	Ito Bergonzoli	53.45	"
82	" 8	13106	Birla Bros.	11107.50	"
82	" 8	13107	Birla Bros.	23607.50	180 days
83	" 15	13108	Nissho Co.	1197.81	30 "

(Testimony of Homer E. Pope.)

(The dates listed under the heading "Date Deposited" in the foregoing schedule refers to the date upon which drafts were mailed from Richfield Oil Company to defendant. All drafts were received by defendant one day later.)

Said witness testified further as follows:

There came a time when the acceptances had to be paid and the payment of the acceptances was the subject of some correspondence between the Bank and Richfield Oil Company. When drafts were collected by the Bank and the proceeds applied in payment of acceptances, advices were sent by the Bank to Richfield Oil Company. It frequently occurred that certain of the drafts under the acceptances would be paid in advance of maturity of the acceptances and the money applied in anticipation of the acceptances.

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to Richfield Oil Company of California, dated December 16, 1930, and said letter was received in evidence and marked Plaintiff's Exhibit 93. Said letter referred to drafts numbered 103004, (Plaintiff's Exhibit 22) and 103006a (Plaintiff's Exhibit 27), drawn on Birla Bros. Ltd. at sight, for $63,950 and $55,900.76 respectively, and stated that the proceeds of these drafts [204] had been received. Said letter further stated that the total amount of said drafts less a sum deducted for collection charges was being applied in anticipation of maturing acceptances. This total amount so stated to have been applied was $119,626.05.

(Testimony of Homer E. Pope.)

Said witness testified further as follows:

This was the first letter received by the Richfield Oil Company from the bank indicating that the bank had received the proceeds of any of these drafts. To my knowledge, between the date upon which the first four drafts of Birla Bros., Ltd. were deposited, that is, the two sight drafts and the two 180 day drafts, up to the time of the receipt of this letter, I had not received any communication at all from the bank relating to the two 180 day sight drafts or either of them, excepting the correspondence that has been introduced in evidence.

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to Richfield Oil Company of California, dated January 12, 1931, and the same was received in evidence and marked Plaintiff's Exhibit 94. Said letter stated that a credit memorandum was enclosed showing $6.87 credited to the account of Richfield Oil Company and that this sum represented interest on an amount held in anticipation of acceptances for $5,000 due on the following day.

Said witness testified further as follows:

The interest credit of $6.87 was interest to which the Richfield Oil Company was entitled upon the collections which were received by the bank and applied in anticipation of the maturing of the $5,000 acceptances. That interest was actually credited by the bank to the commercial account of Richfield Oil Company and not retained by the bank.

(Testimony of Homer E. Pope.)

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to Richfield Oil Company of California, and said letter was received in evidence and marked Plaintiff's Exhibit 95. Said letter was in the words and figures as follows:

"January 3, 1931.

Enclosed is our usual advice informing you that your collection No. 103010 for $11,031.14 has been paid. We have applied the net proceeds, amounting to $10,991.07 in anticipation of our acceptances executed for your account. [205] For your information, our acceptances for your account are as follows:

$115,000	due January	6
5,000	" "	13
10,000	" "	19
25,000	" February	26

against which we have received payment (proceeds of collections) as follows:

$119.626.05	December 10
10,991.07	December 31

Yours very truly,"

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to Richfield Oil Company of California, and said letter was received in evidence and marked Plaintiff's Exhibit 96. Said letter was in the words and figures as follows:

(Testimony of Homer E. Pope.)

"January 6, 1931.

We refer to acceptances executed by us October 8, totaling $115,000. These acceptances matured today.

As already informed you we aplied $119,626.05 representing the proceeds of collections on December 16, value December 10, in anticipation of maturing acceptances.

As per the enclosed memorandum we have credited your account $124.58, representing interest due you on $115,000. from December 10, to and including, January 4. These acceptances, as you probably know, are payable by you one day prior to maturity.

Interest will be adjusted on the remainder of $4,626.05 on January 13, when an acceptance for $5,000 matures.

Yours very truly"

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to W. C. McDuffie, Receiver, together with advices and bill attached thereto, and said documents were received in evidence and marked Plaintiff's Exhibit 97. Said letter was in the words and figures as follows:

"January 26, 1931.

We refer to Richfield Oil Company of California collection No. 113014 drawn on Nissho Co. Ltd. for $1547.50. This collection has been paid and the total proceeds amount to [206]

(Testimony of Homer E. Pope.)

$1560.58 as per memorandum attached. This amount, as well as interest amounting to $5.00 as per statement attached, has been applied in anticipation of acceptances for $25,000. due February 26.

Yours very truly"

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to W. C. McDuffie, Receiver, and said letter was received in evidence and marked Plaintiff's Exhibit 98. Said letter is in the words and figures as follows:

"January 28, 1931.

We refer to Richfield Oil Company of California draft No. 103009 drawn on Ricardo Velazquez for $2,442.40. This draft has been paid and the total proceeds amount to $2,484.49, as per memorandum attached.

This sum has been applied in anticipation of our acceptance for $25,000. due February 26.

Yours very truly"

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to W. McDuffie, Receiver, and said letter was received in evideence and marked Plaintiff's Exhibit 99. Said letter was in the words and figures as follows:

"February 2, 1931.

We refer to your draft No. 113013 drawn on Rafael Alvarez Le Hijos, for $2,446.82.

(Testimony of Homer E. Pope.)

This draft has been paid and the total proceeds amount to $2,443.77, as per memorandum attached. This amount has been applied in anticipation of acceptances for $25,000, due February 26.

Yours very truly"

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to W. McDuffie, Receiver, and said letter was received in evidence and marked Plaintiff's Exhibit 100. Said letter was in words and figures as follows:

"February 3, 1931.

We refer to draft No. 113001 of the Richfield Oil Company of California.

This draft has been paid and the total proceeds amount to [207] $1194.81, as per memorandum attached. This amount has been applied in anticipation of acceptances for $25,000, due February 26.

Yours very truly"

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co., to W. McDuffie, Receiver, and said letter was received in evidence and marked Plaintiff's Exhibit 101. Said letter was in words and figures as follows:

"February 4, 1931.

We refer to draft No. 113023 of the Richfield Oil Company of California;

This draft has been paid and the total proceeds amount to $889.88, as per memorandum

(Testimony of Homer E. Pope.)

attached. This amount has been applied in anticipation of acceptance for $25,000. due February 26.

Yours very truly"

Plaintiff then offered in evidence a letter dated February 4, 1931, from Wells Fargo Bank & Union Trust Co. to W. McDuffie, Receiver, and said letter was received in evidence and marked Plaintiff's Exhibit 102. Said letter stated that a debit memorandum of the sum of $150.20 charged against Richfield Oil Company of California was in error and that the sum had already been collected from Richfield Oil Company of California.

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to W. McDuffie, Receiver, and said letter was received in evidence and marked Plaintiff's Exhibit 103. Said letter was in the words and figures as follows:

"February 13, 1931.

We refer to drafts Nos. 123007, 113012 and 103030 of Richfield Oil Company of California.

These drafts have been paid and the total proceeds amount to $1,019.82, $1,460.08 and $1,-396.27, respectively, as per memorandum attached. These amounts have been applied in anticipation of acceptance for $25,000. due February 26.

Yours very truly"

(Testimony of Homer E. Pope.)

Said witness testified further as follows: [208]

These short time drafts which were deposited with the bank matured at different times. Some of the drafts later deposited were collected previous to the collection of drafts earlier deposited. In other words, the drafts themselves were not collected in the order in which they were deposited. As the proceeds would come in the bank applied them first to the acceptances in the sum of $115,000. and then next to the acceptances as they were issued, taking into consideration the date of maturity of the acceptances, so that following this procedure the proceeds of drafts deposited after earlier drafts had been deposited would be applied to the acceptances coming due and maturing first in point of time.

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to W. McDuffie, Receiver, and said letter was received in evidence and marked Plaintiff's Exhibit 104. Said letter was in the words and figures as follows:

"March 14, 1931.

We refer to drafts Nos. 113010, 113017 and 113007 of the Richfield Oil Company of California.

These drafts have been paid and the total proceeds amount to $1,829.07, $7,377.65 and $1,221.76 respectively, as per memorandum attached. These amounts have been applied in anticipation of acceptance for $25,000. due February 26.

Yours very truly"

(Testimony of Homer E. Pope.)

Plaintiff then offered in evidence a letter dated February 21, 1931, from Richfield Oil Company of California to Wells Fargo Bank & Union Trust Co., and said letter was received in evidence and marked Plaintiff's Exhibit 105. Said letter stated that a bank acceptance for $1600 was enclosed and also an acceptance agreement. Said letter further stated that these documents were forwarded to make good a balance due of $1,499.70 on the $25,000 of bank acceptances to come due on February 26, 1931, requesting that if sufficient funds were received from collec- [209] tions of drafts, the documents be returned to Richfield Oil Company.

Plaintiff then offered in evidence a letter from Richfield Oil Company of California to Wells Fargo Bank & Union Trust Co., and said letter was received in evidence and marked Plaintiff's Exhibit 106. Said letter was in the words and figures as follows:

"March 3, 1931.

Wells Fargo Bank & Union Trust Co.
San Francisco, California.

Dear Sirs: Attention: Mr. Gilstrap.

Referring to your letter of February 26th, advising us of payment of certain drafts totaling $9260.81, less certain charges amounting to $11.53, leaving a balance of $9249.28 from which you are taking $1499.70 to meet the balance due on acceptances February 26th, leaving the sum of $7749.58 to be credited to our ac-

(Testimony of Homer E. Pope.)

count, and referring to your telegram of January 16th, I beg to inform you that all banks transferred the total amount of deposit to the credit of Richfield Oil Company of California on January 15th, 1931, to the credit of William C. McDuffie, Receiver. I will therefore appreciate it if you will kindly credit the remainder of the proceeds as mentioned above, $7,-749.58, to the credit of Richfield Oil Company of California, William C. McDuffie, Receiver, and advise as soon as this transfer has been made.

Yours very truly,
RICHFIELD OIL COMPANY,
OF CALIFORNIA
William C. McDuffie, Receiver."

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to W. C. McDuffie, Receiver, together with memoranda attached thereto and said letter was received in evidence and marked Plaintiff's Exhibit 107. Said letter and memoranda attached was in the words and figures as follows:

"February 26, 1931.

Enclosed are advices of payment of your drafts Nos. 113009, 113018 and 123008. The proceeds amount to $4666.98, $650.06 and $2,-443.77 respectively.

We have also received a partial payment of

(Testimony of Homer E. Pope.)

$1500.00 to apply on your draft No. 103012, which after deduction of all charges, as per statement attached, leaves a net amount of $1488.47.

From the four amounts above mentioned, the sum of $1499.70 has been taken to meet the balance due on acceptances maturing today. The remainder of the proceeds, totalling $7749.58, we are holding in accordance with the notice given you by our wire of January 16. [210]

We are returning herewith the acceptance form and the acceptance agreement which you forwarded with your letter of February 21 and which we shall not have to use.

Yours very truly,
W. J. Gilstrap, Assistant Cashier."

"San Francisco, Calif., February 24, 1931.

WELLS FARGO BANK & UNION TRUST CO.
Market at Montgomery
San Francisco

Account of William C. McDuffie, Receiver,
Richfield Oil Co. of California,
555 South Flower St.,
Los Angeles, California.
Proceeds:

(Testimony of Homer E. Pope.)

Part payment on your collection #103012 our #6945 as per your letter of January 24, 1931, Face amount of draft		$2441.00
Part Payment		1500.00
Balance		$ 941.00
Less correspondent charges	$9.65	
Less our charges	1.88	11.53
		$1488.47

Said witness testified further as follows:

I kept records in my office showing the deposit of these drafts with the bank. I kept little pencil memos as records showing what particular drafts were, according to my understanding, deposited under the acceptances. I did not keep records themselves but used my correspondence showing the proceeds of the drafts as they were collected. I took the dates the drafts were paid and I made pencilled memorandums as to the net proceeds from the correspondence received from the bank.

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to W. C. McDuffie, Receiver, and said letter was received in evidence and marked Plaintiff's Exhibit 108. Said letter was in words and figures as follows:

"March 5, 1931.

We refer to your letter of March 3 regarding funds received representing proceeds of collections.

(Testimony of Homer E. Pope.)

In accordance with your request, we are crediting the account of William C. McDuffie, Receiver, Richfield Oil Company of California, with the sum of $7749.58. [211]

We are also crediting this account with $11,-082.51, representing proceeds of collection No. 13106 of the Richfield Oil Company of California, particulars as per memorandum attached.

Yours very truly,"

Plaintiff then offered in evidence a telegram from Richfield Oil Company of California to Wells Fargo Bank & Union Trust Co., and said telegram was received in evidence and marked Plaintiff's Exhibit 109. Said telegram was in the words and figures as follows:

"Los Angeles Calif 248P Mar 2 1931

WFBAUTCO

Attn W. J. Gilstrap

Please repeat telegram dated January sixteenth mentioned in your letter to Lyons of February twenty sixth please answer immediately

RICHFIELD OIL CO OF CALIF

POPE."

Plaintiff then offered in evidence a telegram from Wells Fargo Bank & Union Trust Co. to W. C. McDuffie, Receiver, and said telegram was received

(Testimony of Homer E. Pope.)

in evidence and marked Plaintiff's Exhibit 110. Said telegram was in the words and figures as follows:

"Mar. 2 1931

Our telegram January sixteenth addressed to Mister McDuffie read as follows quote replying telegram we are willing to restore into your name as receiver Richfield's balance in checking account provided we are notified by you that all company's banks have taken similar action stop we are holding certain collections as security for acceptances please understand that we continue to reserve all our rights for bankers lien against these collections unquote."

Said witness testified further as follows:

When the sum of $1499.70 was paid as set forth in the letter marked Plaintiff's Exhibit 107, all of the $25,000 worth of acceptances were paid in full, they having matured on February 26, 1931. Before release of acceptances was requested by the bank, Richfield Oil Company had on deposit with the bank a sufficient number of short time drafts exceeding to some extent the total amount of the acceptances. After February 26, 1931, no acceptances were obtained by Richfield Oil Company from Wells Fargo Bank & Union Trust Co. or requested from the bank.

Draft No. 13106 was deposited with the bank on January 8th [212] or January 9th, 1931. This was a sight draft. That particular draft is the draft

(Testimony of Homer E. Pope.)

referred to in the concluding paragraph of Plaintiff's Exhibit 108, in which it is said:

> "We are also crediting this account with $11,082.51, representing proceeds of collection No. 13106 of the Richfield Oil Company of California, particulars as per memorandum attached."

The sum of $7,749.58 which represented the balance of the proceeds of the drafts collected by the bank, a part of which, the sum of $1,499.70, was applied in satisfaction of the $25,000 acceptances, was actually credited to the account of the Receiver.

Plaintiff then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to W. C. McDuffie, Receiver, together with memorandum attached thereto, and the same were received in evidence and marked Plaintiff's Exhibit 111. Said letter stated that the bank had received a number of anticipated payments on the acceptance of $25,000 maturing on February 26, 1931, and that an interest credit of $18.17 was being allowed on these payments. Said memorandum was a tabulation of the interest allowed.

Said witness testified further as follows:

The interest referred to in this memorandum is the interest which became due because of anticipated payments on acceptances and represents the proceeds of drafts collected, the principal of which proceeds was applied on account of the acceptances and

(Testimony of Homer E. Pope.)

in anticipation of the maturity of the acceptances.

The proceeds of the drafts deposited before the appointment of the Receiver and collected by the bank after the appointment of the Receiver and between the 26th day of February, 1931, and the early part of May, 1931, were deposited to the account of the Receiver and used by the Receiver.

Plaintiff then offered in evidence a letter dated April 22, 1931, from Wells Fargo Bank to W. C. McDuffie, Receiver, and the same was received in evidence and marked Plaintiff's Exhibit 112. Said letter referred to the fact that Richfield Oil Company desired to [213] have cancelled the customary rebate of four per cent per annum on drafts of Birla Bros. paid before maturity, and requested information as to whether Richfield Oil Company would communicate directly with Birla Bros. Ltd. or desired the bank to do so through its correspondent.

Plaintiff then offered in evidence a letter dated May 7, 1931, from William C. McDuffie, Receiver of Richfield Oil Company of California, to Wells Fargo Bank & Union Trust Co., and said letter was received in evidence and marked Plaintiff's Exhibit 113. Said letter stated that Richfield Oil Company had followed the bank's suggestion and had written directly to Birla Bros. regarding the four per cent rebate.

Plaintiff then offered in evidence a letter dated May 5, 1931, from Wells Fargo Bank & Union

(Testimony of Homer E. Pope.)

Trust Co. to William C. McDuffie, Receiver, and said letter was received in evidence and marked Plaintiff's Exhibit 114. Said letter stated that no reply had as yet been received to the letter which is Plaintiff's Exhibit 112.

Plaintiff then offered in evidence a letter dated May 8, 1931, from William C. McDuffie, Receiver of Richfield Oil Company of California, to Wells Fargo Bank & Union Trust Co., and said letter was received in evidence and marked Plaintiff's Exhibit 115. Said letter requested the bank to cable to its correspondent at Calcutta, India, to remit the proceeds of draft No. 103005 for $63,950.00 and draft No. 103006-B for $55,900.76, both of which drafts were drawn on Birla Bros. Ltd.

Said witness testified further as follows:

Draft No. 103005 for $63,950.00, was the draft next issued after draft No. 103004, and represented the same amount of money and was a 180 day sight draft which was deposited with the bank on or about the 8th of October, 1930. Draft No. 103006-B was the counterpart of draft No. 103006-A, and was for $55,900.76, and represented the 180 day draft likewise deposited with the drafts on said October 8, 1930. [214]

Between the date upon which those drafts were deposited with the bank and the 8th day of May, 1931, the bank had not communicated with me or the Richfield Oil Company to the effect that they

(Testimony of Homer E. Pope.)

were claiming or claimed a bankers lien or any other sort of lien on these two drafts.

Plaintiff then offered in evidence a letter dated May 9, 1931, from Wells Fargo Bank & Union Trust Co. to William C. McDuffie, Receiver, and said letter was received in evidence and marked Plaintiff's Exhibit 116. Said letter stated that in accordance with the request of the Richfield Oil Company the bank had cabled their Calcutta correspondent referring to the draft of Richfield Oil Company, No. 43110, drawn on Birla Bros. Ltd. for $45.035.47, instructing said correspondent to transfer the proceeds of the draft by cable when paid. (This draft is not in issue in the present case.)

Cross Examination

At the present time I am a salesman for Richfield Oil Company. I am no longer with the Foreign Department. I was in the Foreign Department from September, 1929, until November, 1931. I was on the financial side of the Foreign Department rather than on the export business side, and had more concern about the financial arrangements than about other business of the Foreign Department. Mr. Hall was Manager of the Foreign Department and was generally in charge of the work of the Foreign Department.

I came to San Francisco once to see members of the Wells Fargo Bank. That was in the early part of October, 1930, and after I had talked with Mr.

(Testimony of Homer E. Pope.)

Hall about his arrangements with the Wells Fargo Bank. Mr. Hall asked me to come, the purpose of my trip being educational since I was not familiar with the new method of handling foreign collections proposed at that time. I went there with Mr. Hall to learn about that business. I had with me the so-called acceptance agreement given to me by Mr. Hall. I believe Mr. [215] Hall in handing me this acceptance agreement said something to the effect that this was the arrangement with which I was to familiarize myself. I will not state positively that he said this was the arrangement under which drafts were to be deposited with Wells Fargo Bank, because I don't remember.

Up to that time we had been discounting drafts with the Security First National Bank of Los Angeles. After that, I don't remember that we discounted any more drafts with the Security Bank, but we did deposit drafts with the Security Bank for collection. Approximately $300,000 of the amount so collected was turned back subsequent to the receivership.

I do not remember any discussion with the Wells Fargo Bank & Union Trust Co. about a revolving credit or a continuous credit. I do not remember Mr. Hall telling me that the bank had granted a credit to Richfield Oil Company of $150,000 on bankers acceptances and that this was to be a continuing credit or a revolving credit to be covered by one agreement. This was not my understanding of the trans-

(Testimony of Homer E. Pope.)

action. I had no discussion with Mr. Hall about it. To my knowledge, a revolving credit is a credit with a stipulated limit but its continuance is indefinite until cancelled by the other party. It is my understanding that after we had issued the initial $150,000 of bank acceptances which we brought up it would be necessary to make out a new acceptance agreement. I cannot remember any one telling me that. I was not familiar with these transactions to any extent before I came to the bank in the early part of October and the whole thing was strange to me.

The first time I saw this acceptance agreement, Plaintiff's Exhibit 16, was a few days before we came up to San Francisco. I did not discuss its contents with any one. I did not make any in- [216] quiry as to why there were blanks in the agreement. I believe that subject came up during our conversation with Mr. Gilstrap. To the best of my memory I believe something of this nature was said by Mr. Gilstrap: "As you will be depositing acceptances from time to time under this arrangement and drafts under this arrangement, all of which you cannot identify now, it is impossible to fill in those blanks at the present time." We could not give by number and reference on October 6th or 7th drafts that we would deposit on October 10th or 12th. But none the less it might be that drafts of October 10th or 12th were intended to apply under the agreement.

(Testimony of Homer E. Pope.)

As I remember it, something was said to the effect that reference to specific drafts was left blank in the acceptance agreement in order to provide for the deposit of drafts in the future thereunder, the numbers and descriptions of which were at the time of the execution of the agreement unknown. I don't remember anything having been said to the effect that the reason for the blanks in the agreement was to avoid the necessity of a new acceptance agreement every time an acceptance was issued against certain drafts.

(The foregoing testimony, commencing with the words "As I remember it something was said" was objected to by counsel for complainant on the ground it was incompetent, irrelevant and immaterial, and an attempt by parol to vary the terms of the acceptance agreement. Objection was overruled and exception noted.)

There were two acceptance agreements executed between the Richfield Oil Company and the Wells Fargo Bank, said agreements being Plaintiff's Exhibit 16 and a further acceptance for $5,000 being Plaintiff's Exhibit 38. To the best of my knowledge there was also an agreement that the 180 day drafts would be accepted for collection only and not be used as a basis for the issuance of acceptances. The Richfield Oil Company was only required to deposit sufficient drafts, the net proceeds of which would satisfy the amount of the bank acceptances. We

(Testimony of Homer E. Pope.)

deposited with the Wells Fargo [217] Bank drafts in excess of $155,000. The total amount of drafts exclusive of the drafts which the Wells Fargo Bank sought to exercise its rights against amounted to $197,390 according to my computation. With the exception of those drafts against which the Wells Fargo Bank sought to exercise its rights, there were a very few drafts for a very slight amount in excess of 90 days. They amounted to about $3,000 or $4,000 only. Excluding the drafts of a maturity in excess of 90 days, the total amount of drafts deposited with the Wells Fargo Bank between October 1, 1930, and January 15, 1931, amounted to approximately $195,000. I would not say that all of them were deposited under the acceptance agreement. The way in which I differentiated between drafts that were deposited under the acceptance agreement and drafts that were not deposited under the acceptance agreement were as follows: when I figured up my drafts at the time I requested the issuance of bank acceptances, I would have to have at that time enough drafts deposited at Wells Fargo Bank, the proceeds of which would pay promptly the bank acceptances.

Draft No. 103012 was paid in partial payments. The first payment was made on the 24th of February. I should say that in all probability these proceeds were used to make a part payment on the last $25,000 worth of acceptances issued.

I am quite positive that the initial $115,000 worth of acceptances were issued only against drafts Nos.

(Testimony of Homer E. Pope.)

103004 and 103006a, totalling $119,850.76. My understanding was that the $115,000 of acceptances were not issued against drafts Nos. 103005 and 103006b, the two companion 180 day drafts that accompanied drafts Nos. 103004 and 103006a. My testimony now is that the 180 day drafts were to be kept separate and were collections only. The signature on the letter which you hand me is that of G. P. Lyons, Comptroller of the Richfield Oil Company. The initials "R. L. H." on this letter are [218] Mr. Hall's.

Defendant then offered in evidence a letter from Richfield Oil Company of California to Wells Fargo Bank & Union Trust Co., and the same was received in evidence and marked Defendant's Exhibit "A". Said letter is in the words and figures as follows:

"October 7, 1930.

E. Leuenberger, Asst. Vice-President,
Wells Fargo Bank & Union Trust Company,
Montgomery & Market Streets,
San Francisco, California.

Dear Sir:

We are sending by Mr. Hall, documents covering a shipment to Birla Brothers, Ltd., Calcutta, India. Will you please release against this shipment $115,000.00 worth of acceptances made payable at ~~120~~ 90 days sight.

R.L.H.

Yours very truly,

G. P. LYONS
Comptroller"

(Testimony of Homer E. Pope.)

(Originally this letter stated that the acceptances were made payable at 120 days sight. This was scratched out and changed to 90 days, and initialed by R. L. Hall.)

With reservations, I should say that Plaintiff's Exhibits 22 and 23 are the letters of transmittal and the shipping documents referred to in the letter of October 7th which has just been marked Defendant's Exhibit "A", my reservations being that due to our understanding with Mr. Gilstrap and our conversation, the documents that we had reference to with respect to the issuance of the $115,000 worth of bank acceptances were the sight drafts. That is my conclusion and voluntary statement now. I would say that the documents referred to in the letter of October 7th, Defendant's Exhibit "A", reading: "We are sending by Mr. Hall documents covering a shipment to Birla Bros. Ltd., Calcutta, India", are the documents referred to in the letters of transmittal of the same date which have been marked Plaintiff's Exhibits 22 and 23. [219]

It was my understanding that the advance of $115,000 was to be made against drafts.

During the course of the conversation at the Wells Fargo Bank, there was some discussion as to the financial responsibility of Birla Bros. Mr. Hall spoke very highly of Birla Bros., saying that they always met their obligations to us promptly. Mr. Gilstrap showed us a cable from Calcutta, India.

(Testimony of Homer E. Pope.)

Defendant then offered in evidence a telegram from Netherlands Trading Society, Calcutta, India, to Wells Fargo Bank & Union Trust Co., and said telegram was received in evidence and marked Defendant's Exhibit "B". Said telegram was in code but was decoded on the same paper. The decoded part was in the words and figures as follows:

> "Referring your wire of the first of this month referring your wire of the fourth of this month our reply delayed account holiday we are informed confidentially (that) limited company paid up capital rupee 5,000,000 respectable but speculative reported have suffered severe losses recently.
>
> Netherlands Trading Society, Calcutta."

Said witness testified further as follows:

There was a discussion about this telegram by Mr. Gilstrap in my presence and he said it was not a satisfactory credit report. This came up during the discussion as to the 180 day drafts and it was related to our 180 day drafts on Birla Bros. We wanted to know whether the bank would take into consideration as a basis for their acceptances the 180 day paper on Birla Bros., as well as the sight paper. I don't remember whether either Mr. Gilstrap or Mr. Leuenberger said that this credit report on Birla Bros. was not good enough for the bank to advance for the whole amount of the shipment. As I remember the discussion, Mr. Hall and I were

(Testimony of Homer E. Pope.)

trying to raise all the money that we could on the Birla Bros. respective shipments and we asked Mr. Gilstrap if he could not issue acceptances against the whole shipment and he said that he could not because the time of the 180 day drafts was too long to be used as a basis for bankers acceptances and that it would not be considered prime paper. I believe he also did at that time [220] bring up the discussion of the credit standing of Birla Bros. The part of the conversation as I remember it relating to that was that the 180 day drafts, as I understood it, were definitely out because they were too long. It is my understanding, gathered from that conversation, that prime commercial paper depends upon the maturity date and that there cannot be prime commercial paper for 180 days.

I believe that Mr. Gilstrap and Mr. Leuenberger said: "We cannot use as a basis for the amount of your acceptances the 180 day paper on Birla Bros." They did not tell me, as I remember it, that they waived the security of that paper because I do not believe that came into the discussion.

The practice of transmitting drafts in the same form of letter as that shown in Plaintiff's Exhibits 24 and 25 continued throughout the entire series of transactions. Referirng to Plaintiff's Exhibits 40 to 92, in each instance a draft was deposited with the letter and shipping documents were forwarded with the letter of transmittal, and thereafter the bank issued its receipt to the Richfield Oil Company for these items.

(Testimony of Homer E. Pope.)

The Wells Fargo Bank charged a collection fee for the collection of each draft deposited by the Richfield Oil Company with the Wells Fargo Bank subsequent to my visit of October 6, 1930, and up to the time of the appointment of the Receiver. In computing the charge, it was made in accordance with the amount on the face of the draft and was some percentage of the amount of the face of the draft.

The witness' attention was then called to a document which had previously been marked Plaintiff's Exhibit 25 for identification. With the consent of counsel for defendant, plaintiff then introduced at that time said document in evidence and the same was received in evidence and marked Plaintiff's Exhibit 25. This document was a tabulation of the drafts deposited by Richfield Oil Company with [221] Wells Fargo Bank from October 6, 1930, until January 15, 1931, and was substantially the same as that hereinbefore set forth with respect to Plaintiff's Exhibits 40 to 92, with the exception that it included the date that each draft was due in the foreign country and the date upon which it was ultimately paid, and also included the four Birla Bros. drafts, Nos. 103004, 103005, 103006a and 103006b. (It was stipulated that since this document was prepared in contemplation of the trial of this action, the same was to be used solely for purposes of illustration and was not to be binding upon defendant.)

(Testimony of Homer E. Pope.)

Said witness testified further as follows:

Draft No. 103024 was returned to the Richfield Oil Company without having been collected, the reason being that the ship that was to pick up the goods covered thereby did not do so. The same thing is true of draft No. 103028.

The sum of $169,707.81 represented the total face amount of the drafts excluding the two 180 day drafts drawn on Birla Bros. and the two drafts that were returned, which were deposited with the Wells Fargo Bank up to and including the 24th day of November, 1930.

Drafts Nos. 103004 and 103006a, which were the two sight Birla Bros. drafts deposited on October 7, 1930, totalled $119,850.76, and on said day $115,000 worth of acceptances were issued and these were included in the $150,000 of acceptances which I brought up to the bank with me on October 6th. Deducting $115,000 from $119,850.76 leaves $4,-850.76. The next draft to be deposited was No. 103009 for $2,442.40. Draft No. 103012 for $2,441 was also deposited, but not next in order. Addition of the two last named figures to the figure of $4,850.76 makes a total of $9,734.16. This is the same figure which appears in Plaintiff's Exhibit 28, and [222] this was my understanding of the so-called draft reserve which we had at that time. It is hard to say where I first learned of the expression "draft reserve". It may be that that was our own method of explaining the situation.

(Testimony of Homer E. Pope.)

The $5,000 acceptance was issued subsequent to the receipt of the letter marked Plaintiff's Exhibit 28. In the letter marked Plaintiff's Exhibit 29, reference is made to the fact that we had forgotten to include draft No. 103010. Deduction of the sum of $5,000 from $9,734.16 leaves $4,734.16, which exclusive of Draft No. 103010 according to our understanding constituted the so-called draft reserve as of that time. Then by Plaintiff's Exhibit 29 there was called to our attention the fact that we had an additional so-called reserve of $11,031.14, represented by Draft No. 103010. This made our draft reserve at that time $15,765.30. On October 20, we wrote our letter marked Plaintiff's Exhibit 30, requesting the issuance of acceptances for $10,000. The letter from the bank marked Plaintiff's Exhibit 31, indicated that the $10,000 acceptance dated October 20th and maturing January 19, 1931, was issued. Subsequent to this, there were deposited a considerable number of drafts. Excluding the two returned drafts, Nos. 103024 and 103028, and including those drafts deposited from October 20, 1930, to November 24, 1930, there were deposited drafts in the face amount of $33,932.51.

Our letter marked Plaintiff's Exhibit 33, contains our instructions to the bank asking for the issuance of a final amount of $25,000 worth of acceptances. As evidenced by Plaintiff's Exhibit 35, there were issued the $25,000 worth of acceptances. As against the total amount of acceptances issued,

(Testimony of Homer E. Pope.)

there was a total of $169,707.81 face value of drafts deposited excluding the two 180 day drafts and the returned drafts. The acceptances of the Richfield [223] Oil Company were not to be issued against all of these drafts. There were one or two drafts as I remember it, the proceeds of which would not have arrived in San Francisco on time. The first draft under that heading was draft No. 103027 in the amount of $381.60. The next one was draft No. 113021 in the amount of $2,237.66. The next draft under that heading was No. 103025 for $583, the proceeds of which had already arrived in San Francisco prior to November 24, 1930. The total of these drafts amounts to $3,202.26. Deduction of that figure from the gross figure of $169,707.81, makes $166,505.55. Therefore, up to and including the 24th day of November, 1930, and to and including the date when the last acceptance was issued, there had been deposited with the Wells Fargo Bank drafts of a face value of $166,505.55, which, according to my understanding, were to be used as the basis of acceptances.

The net proceeds of the two Birla Bros. sight drafts, in the sum of $119,626.05, were on or about December 16, 1930, applied in anticipation of the acceptances which were thereafter to mature. These were the first two drafts paid and applied against acceptances. The next draft paid and applied against acceptances was draft No. 103010, as appears from Plaintiff's Exhibit 95. The next draft

(Testimony of Homer E. Pope.)

paid and applied against acceptances was draft No. 113014, as appears from Plaintiff's Exhibit 97. Draft 103009 was the draft next paid and applied against acceptances, as appears from Plaintiff's Exhibit 98. As appears from Plaintiff's Exhibit 99, draft 113013 was the next draft paid and applied against acceptances. Draft No. 113001, referred to in Plaintiff's Exhibit 100 was the next draft paid and applied against acceptances. Subsequent to this, drafts were paid and applied against acceptances in the following order: No. 113023, referred to in Plaintiff's Exhibit 101; drafts Nos. 123007, 113012 and 103030, referred to in Plaintiff's Exhibit 103; drafts Nos. 113010, 113017 and 113007, referred to in Plaintiff's Exhibit 104. [224]

After the payment of the drafts referred to in Plaintiff's Exhibit 104, the sum of $1,499.70 remained due as not having been paid in anticipation of the acceptances. For this amount we sent our letter marked Plaintiff's Exhibit 105 containing a bank acceptance for $1,600, payable at 40 days sight and an acceptance agreement. These documents were subsequently returned to us. The bank had not previously written and asked us for this. The drafts next paid and applied to acceptances were drafts Nos. 113009, 113018, 123009 and 103012, all referred to in Plaintiff's Exhibit 107. From the proceeds of these drafts last mentioned, the balance of the money due under the acceptances was paid.

(Testimony of Homer E. Pope.)

The sum of $1,499.70 was taken from the total sum received in the collection of the drafts last mentioned, but this sum was not allocated against any particular draft.

In the application of these draft proceeds against the acceptances they were paid in anticipation of the maturity of the acceptances. In other words, the acceptances had 90 days to run and when proceeds were received and applied by the bank it was merely an anticipation of the maturity of the acceptances.

The two Birla Bros. drafts, Nos. 13,107 and 13,106, one of which is the subject matter and part of this action, accompanied our letter dated January 8, 1931, marked Plaintiff's Exhibit 82. This was the usual form of transmittal letter, and we received the usual form of receipt from the bank with respect to the deposit of those drafts. On January 8, 1931, apart from the first $115,000 of acceptances which had then matured, there were other acceptances outstanding which had not been paid, and on said date we still owed the Wells Fargo Bank money on acceptances. The last acceptances were paid on February 26, 1930.

I remember that Mr. Hall made a statement to me that he had [225] some interest, he would not say a partnership interest, but he had some interest in the export business of Richfield Oil Company. I know that he made that statement to me once prior to the receivership, and that was during our discussion with Mr. Gilstrap. As I remember it,

(Testimony of Homer E. Pope.)

the substance of his statement was that he wanted the Foreign Department of Richfield kept as a separate and distinct transaction from the other business that Richfield might do with the Wells Fargo Bank. As I remember it, the subject of bankers lien did not arise at that time. To my knowledge no mention was made about the general indebtedness of Richfield to Wells Fargo Bank, and there was no discussion that there was a large so-called unsecured indebtedness. That indebtedness was no concern of mine as it was not in Mr. Hall's department.

I do not remember that Mr. Hall discussed with me that he was fearful that Richfield would not be able to pay that indebtedness. There was no such statement made in our conversation with the Wells Fargo Bank officials.

Before testifying in court, I examined various records of Richfield Oil Company and refreshed my memory from them, and a great deal to which I have testified is not my instant recollection in the matter but my recollection as refreshed after examination of the records and discussion with counsel.

Redirect Examination:

(The document containing the schedules next herein mentioned, was marked Plaintiff's Exhibit 117 for identification.)

During the past two or three days I made an examination of certain schedules and tabulations pre-

(Testimony of Homer E. Pope.)

pared by counsel and checked those tabulations with correspondence and other records of Richfield Oil Company in my possession. I also checked them up with respect to exhibit numbers when exhibit numbers were referred to in the schedules of Plaintiff's Exhibit No. 117 for identification. Other tabulations and schedules in said exhibit were examined and checked by me for the purpose of determining their accuracy. To the best of my judgment and [226] recollection those schedules and tabulations are correctly set up. Subdivision 1 of schedule (a) of said exhibit, under the title "Schedule of Drafts Claimed by Plaintiff to Have Been Deposited as Security for Acceptances Totalling $155,000.00", correctly sets forth the drafts claimed by plaintiff to have been deposited as security for acceptances totalling $155,000.00. These drafts were checked by me for the purpose of determining that they were accurately designated upon this schedule. Whenever we made a request for the issuance of acceptances, we had on deposit with the bank drafts to be used by the bank as security for the acceptances requested. There had been sent to the bank between the issuance of the $130,000.00 of acceptances, represented by $115,000.00, $5,000.00 and $10,000.00, and our request to issue the $25,000.00 additional acceptances, all of the drafts shown upon the first page of said exhibit commencing with draft No. 103023 for $779.10 to and including draft No. 113020 for $1200.00. Opposite

(Testimony of Homer E. Pope.)

draft No. 103012 there is an asterisk by which reference is made to the lower part of the page. That draft was for $2441.00; it was paid in installments; the first installment of $1500.00 was paid February 24, 1931, and applied on the acceptances; the second installment amounting to $470.00 was paid on April 4, 1931, and was credited to the account of the receiver; the final installment was paid on May 11, 1931, and was retained by the bank, as one of the amounts involved in this litigation. I testified upon direct examination that it was stated in the conversation had between Mr. Gilstrap, Mr. Hall and myself that the drafts which would be taken as security for the acceptances would have to have a maturity shorter than the maturity of the acceptances and the proceeds of the draft would have to be in San Francisco in advance of the maturity of the acceptances. When I requested the issuance of the last $25,000.00 worth of acceptances, there had been deposited [227] with the bank drafts having a face value of $159,600.50 as security for all of the acceptances including the proposed $25,000.00 worth of acceptances. Referring to said exhibit last mentioned, the first five drafts shown thereon in the following amounts, $63,950, $55,900.76, $2,442.40, $2,441.00 and $11,031.14, aggregated $135,765.30. Up to that point of time, there had been accepted and issued acceptances aggregating $130,000.00. Deducting this figure from the $135,765.30, we have a surplus of $5,765.30. After the

(Testimony of Homer E. Pope.)

issuance of those acceptances aggregating $130,000.00 and after we had as a reserve surplus the $5,765.30, there were deposited these other drafts referred to on page 1 of said exhibit, which, with the $5,765.30, aggregated $29,600.50, and I then requested the bank to issue the $25,000.00 worth of acceptances, which was done on November 28, 1930.

It is our claim that certain of the drafts deposited on or before the 28th of November, 1930, were not deposited under the acceptance agreement. The first of these were drafts No. 103005 for $63,950.00 and No. 103006b for $55,900.75. The next of these was draft No. 103024 for $1,007.00. With respect to this, the ship did not pick up the goods and the draft was not used. The next of these was draft No. 103025 for $583.00 deposited on October 28, 1930. This draft was paid on November 15, 1930, and was deposited after the acceptances aggregating $130,000.00 were executed and before we had requested additional acceptances totalling $25,000.00. This draft was paid before the date upon which we asked for the $25,000.00 worth of acceptances. The next of these drafts was No. 103028 for $1,204.78 deposited on October 28, 1930, and this was the other draft which was not used because the goods were returned, the ship not taking the goods. It is our claim that draft No. 103027 for $381.60 and draft No. 113008 for $1,007.00 and draft No. 113009 [228] for $5,256.60 and draft No.

(Testimony of Homer E. Pope.)

113018 for $641.25 were not sent up to the bank to be used under the acceptance agreement. It was my custom to figure out as closely as possible the date upon which the proceeds of drafts would be payable in San Francisco. I made that estimate with respect to the four drafts last mentioned. I estimated that the proceeds of those drafts would be received in San Francisco after February 26, 1931. Drafts No. 113021 for $2,237.66 and No. 113023 for $881.13 were deposited after we requested the issuance of the acceptances totalling $25,000.00, and therefore our claim is that they were not under the acceptances. It is our claim that none of the drafts deposited after November 28, 1930, were deposited under the acceptances. Up to the time that the $25,000.00 worth of acceptances were requested, I understood that we had on deposit with the bank under the acceptance agreement a sufficient amount of drafts at a proper maturity to support the acceptances.

Draft No. 103026 for $2,446.82 was deposited as security for acceptances. This draft was paid December 27, 1930, and the proceeds were credited to the Richfield Oil Company. There were sufficient drafts left to take care of the acceptances outstanding. These proceeds were credited by the bank to the Richfield Oil Company without a request of Richfield Oil Company. Draft No. 103029 in the sum of $654.55, deposited on October 28, 1930, was paid on the 27th of December, 1930. This

(Testimony of Homer E. Pope.)

was one of the drafts deposited under the acceptances. The proceeds were collected and applied by the bank without request to the commercial account of Richfield Oil Company, leaving plenty of drafts to meet acceptances. Draft No. 113011 for $103.12 was deposited on November 19, 1930, and paid December 12, 1930. The bank credited the amount of the draft to the account of the Richfield Oil Company without request. Draft No. 113019 for $291.50 was deposited on November 24, 1930, and paid [229] December 12, 1930. The proceeds were credited to the account of Richfield Oil Company without request. This draft was deposited under the acceptance agreement, and draft No. 113020 for $1,200.00 was deposited November 24, 1930, and paid December 18, 1930, and the bank without any request from the Richfield Oil Company deposited the net proceeds to the credit of the Richfield Oil Company. The total of the six drafts last referred to is $5,278.99, and their net proceeds was $5,255.86, and this entire sum was credited to the account of the Richfield Oil Company. Prior to the date of the appointment of the receiver, the bank had not sent any communication to the Richfield Oil Company in writing indicating that it intended to or was offsetting any moneys which it had collected upon these drafts as against any indebtedness claimed by it to be due to it from the Richfield Oil Company. Draft No. 13106 for $11,107.50 was deposited on January 8, 1931, and paid March 5, 1931.

(Testimony of Homer E. Pope.)

The bank voluntarily and of its own initiative put that entire sum to the credit of the receiver by applying it to his account, and did not notify the receiver or the Richfield Oil Company that it claimed any offset or lien against that money. Draft No. 13108 was deposited on January 15, 1931, and paid on March 23, 1931. The proceeds of this draft were deposited to the account of the receiver. Draft No. 103012 for $2,441 was deposited on October 11, 1930, and an installment of the proceeds of it in the sum of $468.05 was received on April 7, 1931. This was one of the drafts deposited under the acceptance agreement. On February 20, 1931, the sum of $1500 was paid on account and the net proceeds of said payment, to-wit, $1,488.87, were applied towards the payment of acceptances aggregating $25,000. On April 7, 1931, the sum of $468.05 was paid. The sum of $468.05 was credited to the account of the receiver voluntarily and the bank did not notify the company that any right of offset or bankers lien was claimed against this sum. Later and on May 11, 1931, the balance of the draft amount- [230] ing to $471 was paid and that sum is one of the sums being retained by the bank under the alleged right of setoff. Draft No. 103027 in the sum of $381.60 was deposited on October 27, 1930, and paid on March 3, 1930. The bank credited the proceeds to the receivership account voluntarily. Draft No. 113008 for $1,007 was deposited November 18, 1930, and paid March

(Testimony of Homer E. Pope.)

19, 1931, and the proceeds thereof credited to the receiver's account voluntarily. Draft No. 113021 for $2,237.66 was deposited November 24, 1930, and paid March 23, 1931, and the net proceeds thereof were credited to the receiver's account voluntarily. The proceeds of drafts No. 123009 for $3,418.90, deposited December 23, 1930, and paid March 24, 1931; No. 123010 for $1,266.29, deposited December 13, 1930, and collected April 4, 1931; No. 123013 for $2,702.66, deposited December 27, 1930, and paid on March 30, 1931; No. 123015 in the sum of $2,692.99, deposited December 27, 1930, and paid April 22, 1931, were credited to the account of the receiver voluntarily by the bank. I never heard of any communication being sent by the bank to the Richfield Oil Company or to the receiver to the effect that the bank was setting off or had a right to set off these sums against any indebtedness due from the Richfield Oil Company.

Schedule I entitled "Schedule showing total proceeds of drafts paid to Richfield Oil Company and/or to Receiver without claim of offset", is a recapitulation of some of the earlier schedules showing first the total proceeds of drafts paid to Richfield Oil Company as per Schedule G amounting to $5,255.86; surplus proceeds of four drafts paid to Receiver after payment in full of acceptances as per Schedule F, $7,749.58; then the total proceeds of remaining drafts paid to Receiver after payment in full of acceptances as per Schedule H,

(Testimony of Homer E. Pope.)

$26,469.57. This total sum, with the exception of the $7,749.58 which is taken care of by correspondence to which I have already referred, was voluntarily paid by the bank either to the Richfield Oil [231] Company or to the Receiver without any protest, and without any claim of right of setoff or bankers' lien.

The aggregate net proceeds of the drafts to which the bank had recourse to take care of the acceptances was $162,749.58. From this sum the acceptances aggregating $155,000.00 were paid, leaving a net balance of $7,749.58 in the hands of the bank, which is the sum referred to in Plaintiff's Exhibit 107.

Drafts No. 103005 and No. 103006b, the two 180 day sight drafts of Birla Bros., deposited October 8, 1930, proceeds of which were received in San Francisco on June 16, 1931; No. 123014 for $1,245.11, deposited December 27, 1930, and paid May 18, 1931; No. 103012, $468.06 of which was paid in May, 1931, and $1,500.00 of which was applied on account of the $25,000 of acceptances, and No. 13107, a 180 day Birla Bros. draft for $23,532.08, deposited on January 8, 1931, the proceeds being paid on September 10, 1931, are the drafts in litigation here, and the bank is retaining the proceeds thereof.

The next schedule entitled "Schedule of drafts not discounted—deposited before receivership, pro-

(Testimony of Homer E. Pope.)

ceeds of which were paid and credited to the Receiver's account", refers to five drafts deposited by Richfield Oil Company before receivership aggregating $152,524.03. This sum was collected by the Security-First National Bank after the appointment of the Receiver and after the receipt of the telegram of January 16, 1931, by the bank and after all of the other banks had sent in their telegrams, which proceeds were paid over to the Receiver by the Security-First National Bank. These drafts had been deposited by the Richfield Oil Company with that bank for collection only.

(The foregoing testimony commencing with the words, "The next schedule" were objected to by counsel for defendant as incompetent, irrelevant and immaterial, and not binding upon, or evidence against defendant. Objection overruled and exception noted.) [232]

Mr. Lyons, who wrote the letter of October 7, 1930, introduced in evidence as Defendant's Exhibit "A", was not with me and Mr. Hall in San Francisco at the time of the conversation at the Wells Fargo Bank & Union Trust Co. He had nothing to do to my knowledge with any of the arrangements made between the bank and the Richfield Oil Company. That letter was written by him and then sent over to my department and accompanied the letter of transmittal.

(Testimony of Homer E. Pope.)

Recross Examination:

This letter, Defendant's Exhibit "A", was written by Mr. Lyons. The initials upon the letter are Mr. Hall's initials and the change from 120 days to 90 days are Mr. Hall's, likewise. Mr. Hall was with me in San Francisco and had been to the bank prior to my having been there with him. With respect to the drafts claimed by us to have been deposited as security for acceptances, I don't remember having written to the Wells Fargo Bank that we were sending them up as security for acceptances. There is no letter with respect thereto. With the exception of the first few drafts, as shown by our correspondence, we did not tell the bank what drafts we were sending up as security for the acceptances.

Further Redirect Examination:

Aside from the sum of $7,749.58, which was the net balance in the possession of the bank from the proceeds of the four drafts after the satisfaction and discharge of the balance of the acceptances, I do not know of any communication sent by the bank to the receiver or to the Richfield Oil Company prior to the early part of May, 1931, notifying the receiver or the company that the bank intended to exercise the right of setoff or banker's lien. [233]

ROBERT L. HALL

was then called as a witness for plaintiff, and testified as follows:

I live at 1549 North Idlewood Road, Glendale, California, in Los Angeles County, and have been a resident of Los Angeles County for 21 years. At the present time I am employed by the United States Government doing special work for a certain department. I went into the employ of the Richfield Oil Company on February 1, 1927. Prior to that time my business had been the exportation of petroleum products. I was employed by the Richfield Oil Company to organize and build up a foreign or exporting department for them, turn over to them my contracts and business which I had before, and to make the department as large as possible in the shortest length of time. Prior to my association with the Richfield Oil Company it had no foreign department. I was employed by the Richfield Oil Company on a fixed drawing account with a certain commission on all goods sold by me to be accepted by the Richfield Oil Company. After my association with the Richfield Oil Company I built up an export and foreign trade business for them in various foreign ports. I organized an exporting and foreign department and was the head of that particular department. I was known as Manager of the Foreign Department. The employees in that department were directly under me, and I was in turn under some of the officials of the Richfield Oil Company. I did all the selling

(Testimony of Robert L. Hall.)

and all the contact with the foreign customers. I passed preliminarily upon all credits, which were confirmed by the credit department; I looked over and passed on all the details of the business as to shipment and seeing that the goods were properly packed and properly dispatched in the harbor; in other words, I had complete charge of it, not being able to obligate the company in any way except with their approval, except [234] in the general O.K.-ing of the details. I negotiated all of the sales of goods and the terms of the sales, but those had to be approved by the officials of the company. In connection with the foreign sales and foreign shipmnts, the documents were prepared in my department by a clerk. Prior to the latter part of 1930, I had become familiar with the firm of Birla Bros. Ltd., located at Calcutta, India. I had transacted business with that firm for some considerable period of time prior to the month of October, 1930. To the best of my knowledge, Birla Bros. had been a customer of the Richfield Oil Company for approximately a year and three-quarters of two years prior to the month of October, 1930. We had an agreement with them respecting the terms of payment. The terms of payment were fifty per cent of the amount of the invoice at sight and fifty per cent of the amount at 180 days D/A.

(The foregoing testimony commencing with the words, "We had an agreement" was ob-

(Testimony of Robert L. Hall.)

jected to by counsel for defendant on the ground it was incompetent, irrelevant and immaterial. Objection was overruled and exception noted.)

Prior to the early part of October, 1930, the Foreign Department of Richfield Oil Company had been doing business with the Security First National Bank, the Citizens National Bank, and the Bank of America, all of Los Angeles. The majority of the drafts deposited with the Security First National Bank prior to October, 1930, were discounted, and some were sent through for collection.

My deposition was taken as a witness in this case approximately the first of October, 1931. I was on a trip when the deposition was taken and came off a boat that was in San Francisco, and upon which I had come to San Francisco. I had had no opportunity to make any investigation of correspondence or records pertaining to this controversy prior to the giving of my deposition. I had had no opportunity to refresh my recollection in connection with [235] any of the facts or to confer with counsel. In order to testify in this case I have recently examined my correspondence and to some extent the records pertaining to the matters involved in this case.

I know Mr. Gilstrap, the Assistant Manager of the Foreign Department of the Wells Fargo Bank. I had known him for some years prior to the month

(Testimony of Robert L. Hall.)

of October, 1930. During or about the month of August, 1930, some dispute arose with respect to the handling of our collections with the Security Bank at Los Angeles, and I concluded that if arrangements could be made, I would like to have the Wells Fargo Bank take care of our collections. On August 17, 1930, I came to San Francisco and went immediately to the Wells Fargo Bank to Mr. Gilstrap's office and I discussed with him the general situation of the Richfield Oil Company's collections, and stated that I was contemplating turning over all the Richfield's collections in foreign countries as far as possible to them. I stated to him and explained to him that I would be responsible as far as possible for those collections and would watch them. I stated to him at that time my employment at the Richfield Oil Company, and I asked him to remember that any transactions were to be considered separate from other transactions of the Richfield, that is, the entire transactions, monetary, the collections of drafts for us or any other business connected with the Foreign Department of Richfield Oil Company.

At that time I knew only in a general way that Richfield Oil Company was obligated for any indebtedness due from it to Wells Fargo Bank. I did not know at that time that a large part of the indebtedness due from Richfield Oil Company to various banks, including the Wells Fargo Bank, was unsecured. I knew that Richfield Oil Com-

(Testimony of Robert L. Hall.)

pany owed many banks and I knew that there was a friendly relation between the Wells Fargo Bank and certain officials of Richfield. I knew prior to this visit that Richfield Oil Company [236] was being pressed for ready cash. Before visiting the Wells Fargo Bank I knew about the right of setoff a bank might have upon paper deposited with it and on the proceeds of paper deposited with it. I knew something about bankers liens.

I stated to Mr. Gilstrap that I had an interest in all collections which were emanating in the Foreign Department and I wanted him to consider it was a separate business arrangement from any other business Richfield had with the Wells Fargo Bank. Mr. Gilstrap said that he understood my position. That is all he said.

I had with me a rough copy of a certain number of our foreign correspondents which were our customers. We discussed those. I stated that I would prepare and send him a complete list of our customers. We discussed Birla Bros. in India in a general way only. I told him that we were shipping to Birla Bros. at fifty per cent at sight and fifty per cent at 180 days D/A. Then I brought up the subject of the use of acceptances. Mr. Hellman came out and we discussed the advantage of the use of acceptances, there being a saving thereby of two and one-quarter or two and a half per cent. Mr. Hellman entered into the conversation in a slight degree, the result being that I believe Mr. Hellman

(Testimony of Robert L. Hall.)

took me downstairs and introduced me to Mr. Lipman, the President of the Bank. Before going in I was introduced to Mr. Eisenbach. I discussed with Mr. Gilstrap the length of time of the drafts under the acceptances. It was stated that 90 day acceptances were more quickly sold. Possibly 120 day acceptances and very rarely, if any, those at 180 days maturity might be taken.

Prior to meeting Mr. Hellman, the only conversation I had with Mr. Gilstrap with respect to acceptances and the procedure to be pursued with respect thereto was that I told him that I had [237] convinced the Richfield Oil Company that the use of acceptances was the proper way of handling export shipments. I conferred with Mr. Hellman at Mr. Gilstrap's desk and in the presence of Mr. Gilstrap. I stated to them that in place of discounting individual drafts I had convinced Richfield that the use of acceptances was the better mode of procedure. Mr. Gilstrap had told me that there was a saving in the use of acceptances of approximately two and a quarter to two and a half per cent. Before I met Mr. Hellman, nothing had been said respecting the character of paper that would be accepted under the acceptances, nor was anything said in that regard during my first conference with Mr. Hellman in the presence of Mr. Gilstrap.

After having a brief conversation with Mr. Hellman, he took me down to the first floor and intro-

(Testimony of Robert L. Hall.)

duced me to Mr. Lipman, in Mr. Lipman's private office. To the best of my recollection, Mr. Hellman stepped out. I was with Mr. Lipman about five minutes. Mr. Lipman told me that he had heard good reports from his Foreign Department in regard to collections of the Foreign Department of Richfield. Mr. Lipman stated that he had accommodated Richfield to a large extent and also had accommodated Mr. Talbot, and he would give a further line of credit based on foreign drafts in the amount of $150,000.00 or thereabouts and see how it would work out. I then made it particularly strong to Mr. Lipman as to my position as Manager of the Foreign Department, that I would continue to give my very careful attention to the drafts of the Foreign Department for two reasons, that I had a personal interest in the collections of the department and that I wanted it considered to be a separate transaction from any obligations or any transactions other than those of the Foreign Department—Richfield's [238] obligations, I mean. In response to this, Mr. Lipman made a remark that "that is good" or "that is excellent". That was the extent of the conversation I had with him and is the only conversation I ever had with Mr. Lipman on this matter.

I left Mr. Lipman's office and went upstairs to the fifth floor to Mr. Gilstrap's desk where I met Mr. Gilstrap again. I was alone with Mr. Gilstrap. I reported to him what Mr. Lipman had told me.

(Testimony of Robert L. Hall.)

I was in San Francisco for six days on that occasion. During that time I had other meetings with Mr. Gilstrap.

During those meetings I discussed the Birla Bros. account in India, stating that Birla Bros. were shipping on a fifty per cent sight and fifty per cent 180 D/A, which is Documents Against Acceptances. I discussed the situation of Birla Bros., its prominence and its financial standing. I believe I discussed whether the entire drafts on Birla would be available for acceptance purposes. He stated, as I remember it, that undoubtedly the sight drafts would be available, but he doubted that the 180 day drafts would be, on account of the length of time it took the drafts to get over to India, which was about 30 days, and then about 30 days or so for the proceeds to return to the bank. The 30 days going over and the 30 days coming back would be added to the 180 day draft.

If the 180 day sight draft is to be accepted in India, the 180 days do not commence to run until the customer sees the draft.

I returned to Los Angeles and to the best of my recollection I took a sample copy of the form of acceptances back with me. Upon my return to Los Angeles, I sent a letter to Wells Fargo Bank & Union Trust Co. [239]

Plaintiff then introduced in evidence a letter from Richfield Oil Company, signed by R. L. Hall, Manager of the Foreign Department, to Wells Fargo

(Testimony of Robert L. Hall.)

Bank & Union Trust Co. dated August 27, 1930, and the same was received in evidence and marked Plaintiff's Exhibit 118. Said letter stated that a list of customers of Richfield in Central and South America was enclosed, and that this was being done following out the statement of the bank to help Richfield in any way it could by obtaining up to the minute credit reports from the local banks at each city regarding the financial standing and opinion of the community as to the integrity of the customers. There was attached to this letter a list of the foreign customers of Richfield Oil Company in Central and South America.

Said witness testified further as follows:

I next left Los Angeles for San Francisco on October 4th. I left Los Angeles on that occasion in company with Mr. Pope. Prior to my departure from Los Angeles I had seen the blank acceptance agreement as well as the forms of acceptances totalling $150,000 which were brought by Mr. Pope to San Francisco on that occasion. We reached San Francisco on Sunday morning, October 5th, and I visited the bank with Mr. Pope on Monday morning. We saw Mr. Gilstrap and were in conference with him about an hour. We had a general discussion in regard to the use of the acceptances, as to the maturity of the drafts on customers. In the conversation it was stated that 90 day acceptances were the best to be used on account of the ready sale of the same. We discussed that all foreign

(Testimony of Robert L. Hall.)

drafts must be arranged so that the proceeds of the same would be in Wells Fargo's hands prior to the maturity of the acceptances. Mr. Gilstrap stated that under no consideration would the 180 day paper be used. We then discussed the shipment which was going forward to Birla Bros. and the 180 day drafts which were on that account. Mr. Gilstrap stated that those [240] drafts would not be acceptable for two reasons—the length of time, and also that he had received a credit report which they did not believe was sufficiently good to allow them to take it. I then reiterated my former conversation with Mr. Gilstrap, that if the acceptances were used that it must be definitely understood that it was a separate transaction from any other transaction in a monetary way which Richfield had with the Wells Fargo Bank. I was following orders in that respect from Mr. McKee. Before coming to San Francisco I had had a conversation with Mr. McKee, who was a Vice President of Richfield and Assistant to the Chairman of the Board, regarding the subject matter of my visit to San Francisco.

Mr. Pope delivered the signed acceptance agreement and the $150,000 of signed acceptance forms to Mr. Gilstrap.

I don't think there was anything said by Mr. Gilstrap or by myself and Mr. Pope during that conversation as to how the 180 day paper would be handled.

(Testimony of Robert L. Hall.)

Mr. Pope and I left San Francisco that evening and returned to Los Angeles. I returned alone to San Francisco the next night. I brought with me the complete drafts and papers on the Birla Bros. shipment. I brought also with me a letter signed by Mr. Lyons which has been introduced in evidence as Defendant's Exhibit "A". I also brought with me the two letters of transmittal dated October 7, 1930, relating to the two shipments, together with the shipping documents and also the bills of lading. When I reached San Francisco, I went to Wells Fargo Bank and met Mr. Gilstrap. Before coming to San Francisco, I had examined the two letters of transmittal— the Lyons letter and the documents accompanying the letters of transmittal—so I was familiar with them all. I brought them over to the bank and had a conference with Mr. Gilstrap on that occasion. He was the only official of the bank with whom I had [241] any conference on that date.

I presented the drafts and the entire folder with the papers and stated that I wanted to get as much money as I could, as much in acceptances cashed as I could. Mr. Gilstrap stated he could only accept Richfield acceptances covering sight drafts on Birla. He then took the papers and released $115,000, which as I remember covered the sight drafts which were $119,000 odd. He gave me a duplicate deposit slip. I immediately left the bank and went down to the Postal Telegraph Company

(Testimony of Robert L. Hall.)

and telephoted that deposit slip to Los Angeles because I was instructed to get that money to Los Angeles as near to ten o'clock as I could. I asked Mr. Gilstrap if it were possible to include any of the 180 day drafts under the acceptances, and he said absolutely not. To the best of my knowledge the only remark that was made as to what would be done with the 180 day drafts was that Mr. Gilstrap said when I turned over the entire papers that he would send them all together to the correspondent in Calcutta. I don't remember anything having been said in the prior conversations occurring between myself and Mr. Gilstrap respecting the collection of the 180 day drafts.

While Mr. Pope and I were together with Mr. Gilstrap, he said that all drafts that were used for acceptances must be paid and the proceeds be in the Wells Fargo Bank at least one day before the acceptances matured.

After having returned to Los Angeles I had a number of conversations by telephone with Mr. Gilstrap. Mr. Gilstrap paid a visit to Los Angeles shortly after October 8, 1930, at my invitation.

Plaintiff then introduced in evidence a telegram from Mr. R. L. Hall of the Richfield Oil Company to Wells Fargo Bank & Union Trust Co., dated October 16, 1930, and a telegram from Mr. Leuenberger of Wells Fargo Bank & Union Trust Co. to R. L. Hall of Richfield Oil Company, dated October 16, 1930, and the same were received in

(Testimony of Robert L. Hall.)

evidence and marked Plaintiff's Exhibit 119. The telegram from R. L. [242] Hall to Wells Fargo Bank & Union Trust Co. requested that Mr. Gilstrap visit the Richfield Oil Company at Los Angeles, in order to establish closer relation between the bank and the Richfield Oil Company, and to observe more closely the operations of the Richfield Foreign Department. The telegram from Mr. Leuenberger to Mr. Hall stated that Mr. Gilstrap would be sent to Los Angeles.

Said witness testified further as follows: I saw Mr. Gilstrap at Los Angeles on the Saturday morning following my wire of October 16th. On that occasion I discussed with Mr. Gilstrap the Birla shipment. I went over again with him the very large cash expenditure which Richfield had to make. I told him I was very sorry that he could not use the 180 day Birla drafts, but that I hoped that after 90 days had passed we could issue acceptances for the unexpired term. Mr. Gilstrap stated that presumably that would be all right, but that a new acceptance agreement would have to be executed for the additional amount.

Approximately May 8, 1931, I telephoned to Mr. Gilstrap at the request of Mr. Muller who was Assistant General Sales Manager of Richfield. I asked Mr. Gilstrap the cost to cable the proceeds of the 180 day drafts when Birla had paid those to his correspondent. He stated that the cost was approximately $500. I reported this conversation

(Testimony of Robert L. Hall.)

to Mr. Muller and a very few minutes afterwards Mr. Gilstrap called me on the telephone. He stated that Wells Fargo Bank was going to grab that money. I asked him why and he stated that they were going to take it, exercising a lien on it for other indebtedness owed the bank. I stated that I was very surprised since they had agreed not to touch any of the collections of the Foreign Department of the Richfield Oil Company. He said he was sorry but that was the decision of the bank. The next day I went to San Francisco and conferred with Mr. Gilstrap, Mr. Eisenbach and Mr. Motherwell. I was with these gentlemen for practically all of two days. I told Mr. Gilstrap, Mr. Eisenbach and Mr. Motherwell about my situation with the Richfield [243] Oil Company, that it was on a commission basis, and that I had an interest in all the collections. I refreshed their memory that I had brought that up with them before and I elaborated on this to a great extent. I stated to Mr. Eisenbach that I understood there was an agreement with Mr. McDuffie that any of the collections would not be taken. I believe—I am positive that Mr. Eisenbach agreed with that statement, but said Mr. Lipman had decided to change his mind and effect the lien against these collections that were coming in. At a meeting with Mr. Gilstrap. Mr. Eisenbach and Mr. Motherwell, I reiterated all the statements that I had made to Mr. Gilstrap and Mr. Eisenbach with reference to the

(Testimony of Robert L. Hall.)

way I understood the agreement. They did not deny any of the statements which I made to them respecting the negotiations occurring at the time of the inception of this business, or respecting the agreement with the receiver. They stated Mr. Lipman was in the East and that he was the man who would have to be conferred with for if the bankers' lien was released it would have to be done on his order. I remained in San Francisco for about two days and the money was not released. I then returned to Los Angeles, and that ended my connection with this situation.

I have been ill for some time and was very seriously ill two years ago. I am pretty near well now.

Cross Examination:

That illness affected my nerves, but my nervousness has been gradually disappearing. It was worse in 1930 than in 1931. I don't think that illness affected my memory. I believe my memory might be affected as to details but would be refreshed in checking up evidence. I do not think my memory would be uncertain as to the order of the conversations and as to the exact contents of them to which I have testified. I am quite certain as to the order of each event and as to the sequence of my visits to the Wells Fargo Bank because I have been careful to check up these visits. I have checked up from the records of the Traffic Department of the Richfield Oil Company. I did not refresh my

(Testimony of Robert L. Hall.)

[244] memory prior to the time of my deposition, which was taken in September, 1931. Since the giving of my deposition I have examined the records of the Richfield Oil Company, including the records of the Foreign Department and the records of the Traffic Department. The correspondence which I used in refreshing my memory has been introduced in evidence. The correspondence is approximately all the records I used. Prior to testifying, I discussed this matter in great detail with Mr. Ward Sullivan, counsel for the receiver, and with Mr. Roche.

The occasion of my first visit to the Wells Fargo Bank with reference to these matters was to turn over the entire collections as far as possible to the Wells Fargo Bank, the Richfield Oil Company being dissatisfied at that time with the method in which foreign collections were handled by the Security First National Bank of Los Angeles. The date of that visit to the best of my recollection was August 18, 1930. Mr. Pope was not with me on that visit.

I gave a deposition on behalf of Plaintiff in this action on or about the 30th day of September, 1931. In that deposition I testified that the occasion of my first contact with Wells Fargo Bank & Union Trust Co. was during the month of September, 1930, the occasion of my contact being that my department was having considerable difficulty on service of collection of foreign bills, and that for many years I had known the service of the Wells

(Testimony of Robert L. Hall.)

Fargo Bank, considered in the export trade one of the best foreign operators on the Coast.

In that deposition I further testified that at the first meeting in connection with this business, Mr. Gilstrap, Mr. Leuenberger and Mr. Hellman were present at the conversation, and that Homer E. Pope was with me from the Richfield Oil Company.

In examining the records of the Foreign Department of Richfield Oil Company I determined that Mr. Pope did not come to San Francisco with me on the occasion of my first visit, and an examination of the records of the Foreign Department caused me to state [245] now that my visit to Wells Fargo Bank was on or about the 17th day of August, 1930. I have nothing that refreshes my memory that Mr. Leuenberger was not present at that conversation. My recollection at the present time is that Mr. Gilstrap was present, and for a short time, Mr. Hellman.

I don't think I stated to Mr. Gilstrap what my connection with the Richfield Oil Company was. I think he knew that.

At the taking of my deposition on September 30, 1931, I testified that I told Mr. Gilstrap that if any form of acceptances were used it would be absolutely understood that it was an entirely distinct transaction from other obligations of the Richfield Oil Company; that I was a partner of Richfield Oil Company in this foreign business; that I had a personal interest in the money, and

(Testimony of Robert L. Hall.)

that I would make it an absolute understanding that I would watch those acceptances and keep the amount of the bills in excess of those acceptances.

At this conversation I believe I brought up the question of acceptances, and told Mr. Gilstrap I thought it was the best way of handling the Richfield Oil Company's business. To the best of my knowledge, Mr. Gilstrap told me what the saving would be by the use of acceptances.

When I stated in my deposition that I had a partnership interest, I did not mean that I was actually a partner in the Richfield Oil Company. I stated at that meeting that I had a commission interest. This commission depended upon the collection of the proceeds of sales by Richfield. The collection of my commission has been a question of dispute between me and the receiver of the Richfield Oil Company for some time and is the subject of a law suit involving $442,000. Proceeds of the drafts which are involved in this litigation are not involved in that suit. I would have an interest to a [246] certain extent after they were paid to Richfield. My claim to part of the proceeds involved in this litigation has been disallowed. An appeal is being arranged by my attorney at the present time. I certainly claim an interest in the proceeds of these drafts and I claimed that interest ever since and long before I learned that Wells Fargo Bank was not going to return the proceeds to the receiver. I first told Wells Fargo Bank of my interest in the

(Testimony of Robert L. Hall.)

proceeds of these drafts at the meeting with Mr. Gilstrap, Mr. Eisenbach and Mr. Motherwell after I learned that Wells Fargo Bank was claiming the proceeds under an agreement or right of set-off. At the occasion of my first conversation with Mr. Gilstrap I did not tell him the amount of my interest. I told him I was operating on a commission basis.

In my conversation with Mr. Gilstrap I described the way we were shipping to Birla Bros., fifty per cent of the face of the invoice at sight and fifty per cent 180 days after sight D/A, or documents against acceptance.

Upon the payment of the first draft and acceptance of the draft for the balance, the documents entitling the consignee to the shipment would be released to the buyer or the consignee.

I first saw Mr. Lipman on the first day after I arrived in San Francisco in August. Before I saw Mr. Lipman, Mr. Hellman had come into the conversation. In Mr. Hellman's presence, Mr. Gilstrap and I discussed the amount of the acceptances. I didn't ask for any specific amount. I don't think Mr. Hellman stated the amount he thought would be recommended. I don't think anything was said in the presence of Mr. Hellman about our 180 day paper on Birla Bros.

Mr. Hellman suggested that I go downstairs to see Mr. Lipman. He said he would like to have me know Mr. Lipman and tell [247] him what I was

(Testimony of Robert L. Hall.)

planning to do and as I remember it how much he would loan us. He said the method of making the loan would rest with Mr. Lipman. I said nothing in the presence of Mr. Hellman with respect to the so-called separateness of this transaction as distinguished from other transactions of the Richfield Oil Company. Mr. Hellman took me downstairs to see Mr. Lipman on the occasion of my first visit to the bank with reference to this matter.

I testified in my deposition that I had two further conversations about the first of October with officials of the Wells Fargo Bank, and that Mr. Gilstrap and Mr. Leuenberger were present at the first of these and that nobody was with me from the Richfield Oil Company, and that after a few minutes I went downstairs and was introduced to Mr. Lipman; that Mr. Lipman stated to me that Richfield Oil was obligated to the bank in a considerable sum, but he was willing to grant acceptances from Richfield from $150,000 to $200,000 or $200,000; and that I told Mr. Lipman that I had told Mr. Gilstrap that if they granted us acceptances, it was an entirely distinct matter from any financial obligations, and I reiterated in my conversation that I had an interest and that the Foreign Department was mine on a joint account. I didn't have a chance to correct this deposition. I looked it over for about five minutes and then had to rush and catch my steamer. Having caught the steamer in San Pedro and coming up here on it

(Testimony of Robert L. Hall.)

and staying aboard and coming over and giving my deposition and rushing back—I just made the steamer as the gangplank was pulled aboard.

It is a fact that I did not see Mr. Lipman on the occasion of my visit in October, but on the occasion of my first visit in August. I was wrong in that particular.

When I was taken to Mr. Lipman's office, Mr. Hellman went downstairs with me. I believe Mr. Gilstrap went with us to the first floor. Mr. Gilstrap parted from us, and Mr. Hellman took me up and I waited until Mr. Lipman got through with a conversation he was having. I am not sure Mr. Eisenbach was there when I went down there. Mr. [248] Hellman introduced me to Mr. Lipman. Mr. Hellman was not present with us during the interview. To the best of my recollection he left after introducing me. My conversation with Mr. Lipman lasted from five to ten minutes. We stood up throughout the entire conference, and Mr. Lipman was standing by his desk close to the door. Mr. Lipman said he would give us $150,000 or $200,000; he may have said $250,000. He made no statement as to how he knew what credit we were entitled to. I did not ask him about any specific credit. I do not remember that Mr. Hellman asked him for the amount he would advance to Richfield. Mr. Lipman said he knew about our drafts and collections and had heard good reports from his Foreign Department about our colleticons. He stated that he had

(Testimony of Robert L. Hall.)

loaned Richfield large sums of money and also had accommodated Mr. Talbot, and that under acceptance obligations he would grant a further credit of $150,000 or $200,000, and see how it would work out. He did not say that this was to be a separate line of credit.

I don't think Mr. Lipman stated that he would advance $150,000 or $200,000 upon the security of our foreign collections—I think he used the word "drafts". To the best of my recollection Mr. Lipman's statement was that he would advance upon the security of our foreign drafts $150,000 to $200,000.

It was when Mr. Lipman completed his remarks that I stated that this must be kept separate and apart. It was immediately prior to my leaving his office. As I remember it, I stated to Mr. Lipman that it was to be understood that this further credit was to be kept separate and be a distinct arrangement with the Foreign Department.

After I left Mr. Lipman, I saw Mr. Gilstrap again. I told him that I would have to take the whole matter of acceptance forms up with the officials at Los Angeles and that he would be advised, and that I could not, myself, pass upon the financial ar- [249] rangements. I believe I discussed with him on that occasion what drafts would be deposited by Richfield under the acceptance arrangement. The substance of that conversation was that following out the use of short term ac-

(Testimony of Robert L. Hall.)

ceptances, that is, ninety days, all drafts would have to come so that they would mature prior to the maturing of the acceptances and be equal to or a little in excess of the acceptances. This was further discussed when Mr. Pope was with me at a subsequent visit. At the first visit I don't think it was mentioned that we could have as high as 180 day paper or paper of any length as security for acceptances because the maturity of the acceptances was the important thing, and when 90 days were up on the first acceptances the bank would renew the acceptances, but this may have been brought up later. As I remember the conversation, whether it was the first or the second trip or whether it was brought up by Mr. Gilstrap or Mr. Hellman or Mr. Leuenberger, it was stated that it was possible that new sets of drafts could be deposited with the bank and the acceptances might be renewed. Also, in cases where the drafts under the acceptances would not be paid, other drafts which we had which were not available for acceptances could replace those drafts.

It was not said at these conferences that we would only need one acceptance agreement to cover various transactions. The only time that a continuous credit was mentioned was I believe by Mr. Gilstrap at first. He said that it could be handled on an acceptance or form a revolving or continuous credit. My talk with Mr. Lipman was absolutely distinct, that we would open a direct line of credit

(Testimony of Robert L. Hall.)

of $150,000 or $250,000, and he stated he would see how that would work out.

After returning to Los Angeles I called Mr. Gilstrap on the phone and asked him to forward trade acceptances and blanks forms of acceptances.

Defendant then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to R. L. Hall, care of Richfield Oil Company of California, and said letter was received in evidence and marked De- [250] fendant's Exhibit "D". Said letter was dated October 1, 1930, and was in the words and figures following:

> "In accordance with your request made by telephone today, we enclose forms of acceptances and acceptance agreements.
>
> We have completed one specimen acceptance and one specimen acceptance agreement for your guidance.
>
> We understand that Our Mr. Eisenbach has discussed the use of these acceptances with your treasurer, Mr. R. W. McKee.
>
> If you require any further information, please do not hesitate to call upon us.
>
> Yours very truly,"

Said witness testified further as follows:

Plaintiff's Exhibit 16, entitled "Acceptance Agreement", in blank was enclosed with the letter marked Defendant's Exhibit "D". I saw Plaintiff's Exhibit 16 when it came to me and after it was executed and also when Mr. Pope delivered

(Testimony of Robert L. Hall.)

it in San Francisco. I have no recollection as to whether $150,000 worth of acceptances were delivered to Mr. Gilstrap, but I presume they were because Mr. Pope got a receipt for them. In my deposition I testified that I came back with the acceptance forms signed in the amount of $115,000 and that they were divided up into eight drafts.

I was confused in my deposition.

Mr. Gilstrap said the credit report showed that Birla Bros. was not financially strong enough and that the credit report was not good enough. He stated that on account of the length of time of the drafts and also on account of the report which he had received, they could not touch the 180 day drafts. He stated they would advance only to the amount of the sight drafts.

Mr. Leuenberger came into the conference and I asked him whether he could handle the 180 day drafts and he said he could not. He made some remark about the credit report, saying it did not look good.

To my knowledge, nothing was said by any of the parties on October 6th with respect to the blanks in the agreement. I am under the impression that something was stated by Mr. Gilstrap that the [251] drafts going under the acceptance forms would be distinctly set aside and placed in a line or marked as being under the acceptance agreement.

I never transmitted any list of drafts supposedly

(Testimony of Robert L. Hall.)

under the acceptance agreement to the Wells Fargo Bank. I do not know that Mr. Pope ever transmitted such a list.

Upon returning to Los Angeles on the night of October 6th, I reported to Mr. McKee, the vice president of Richfield, and Mr. Lyons, the Comptroller, the result of my visit to San Francisco, and that this credit was in effect at San Francisco and ready for operation. I then returned to San Francisco and was entrusted with three letters and drafts and documents covering a shipment of goods to Birla Bros. at Calcutta, India. I brought the letter, Defendant's Exhibit "A". The change in the maturity date of acceptances from 120 days to 90 days on this letter is in my handwriting. I believe this change was made in the Wells Fargo Bank when I delivered the documents there.

The documents referred to in Mr. Lyons' letter accompanied the two letters of transmittal dated October 7th, being respectively Plaintiff's Exhibits 22 and 23. They are the documents referred to in the two letters. Both sets of documents refer to the Birla Bros. shipment, both shipments going out on the steamer "Silver Hazel." Both shipments were covered by two sets of drafts, one sight draft and one 180 day draft at sight. I delivered these documents to Mr. Gilstrap at the Wells Fargo Bank on October 8, 1930. There would be four drafts, two on each shipment presented at that time under the acceptance agreement.

(Testimony of Robert L. Hall.)

I testified in my deposition that at that time no foreign drafts were presented to the bank for collection.

As stated before in the taking of my deposition I had no chance whatsoever to check any of my trips or documents. I could make no agreement for the Richfield Oil Company but it was understood that the drafts under the acceptances signed by Richfield must be in an amount equal to or slightly in excess of the amount of drafts on foreign customers. This was not an understanding, it was the instructions [252] given by Mr. Gilstrap when Mr. Pope and I were in San Francisco on October 6, 1930.

All the shipping documents and drafts were forwarded to the Wells Fargo Bank with a letter similar to the letters of transmittal marked Plaintiff's Exhibits 22 and 23 or with wording practically the same.

I don't remember whether Richfield received any further communication from the Wells Fargo Bank with respect to draft No. 43110, referred to in Plaintiff's Exhibit 116.

Defendant then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to William C. McDuffie, Receiver, dated May 12, 1931, and said letter was received in evidence and marked Defendant's Exhibit "E". Said letter referred to draft No. 43110 drawn on Birla Bros. Ltd. in the sum of $43,035.47, and stated that the remittance from the foreign correspondent had been received and that

(Testimony of Robert L. Hall.)

the receiver's account had been credited with the amount received. (It was conceded that this related to a draft deposited after the receivership and was credited to the receiver's account pursuant to an agreement with him.)

After having been notified by Mr. Gilstrap by telephone that the Wells Fargo Bank intended to take the proceeds of the 180 day drafts on Birla Bros., I went to San Francisco and called on Mr. Gilstrap at the Wells Fargo Bank and protested against this action of the bank, telling him that it was unfair to Richfield and unfair to me. I brought up every argument on the agreement which I had with Wells Fargo in regard to the separateness and distinct part of the acceptance transaction with the Wells Fargo Bank. I put it both on a business basis and on a personal basis. I stated at the argument with him that under no consideration could he exercise a bankers' lien under the acceptance agreement; that it was not included and that it could not be held under that acceptance agreement. I brought up the point of my situation, that I had the claim pending against Richfield and it ran into large figures. Mr. Gilstrap stated that it was something that was beyond his control, that it was exercised on the instructions of Mr. Lipman and that he had nothing to do with it whatsoever and that it would have to be [253] taken up with Mr. Lipman in order to have the bankers' lien removed. Mr. Gilstrap introduced me to Mr. Eisenbach and I

(Testimony of Robert L. Hall.)

told him it was unfair and unjust to me, to the Richfield Oil Company and to Mr. McDuffie. I later met Mr. Motherwell. I did not tell him that I knew the bank had a right to do this thing, but I used every argument possible as a business argument as to the injustice of using the acceptance agreement to exercise a bankers' lien. Then I went into my personal situation and asked them as a favor to me to have the bankers' lien removed.

Redirect Examination:

At the conference of May 8, 1931, I referred to the fact that the acceptances for which the drafts had been turned over to the bank had been paid in full, and the bank officials said that they knew this. I was finally told that it was absolutely impossible to have the bankers' lien removed.

In the course of my conversations with Mr. Gilstrap, he brought up that it was possible to be able to renew acceptances, but the Richfield Oil Company on renewals must place new foreign drafts to cover the amount of the renewed acceptances. Nothing was said in that conversation respecting the renewal of an acceptance agreement. Nothing was said by the bank officials to me that if the acceptances were in fact paid, new acceptances could be issued under the agreement.

On my deposition, in response to a question by Mr. Dinkelspiel, I stated that I was employed by Richfield to organize a foreign or export depart-

(Testimony of Robert L. Hall.)

ment on a guaranteed monthly drawing account and a fixed commission basis, and that that was the partnership to which I referred.

I was notified of the taking of my deposition one or two days before the steamer sailed from San Pedro. My deposition was taken in San Francisco the next morning after the boat arrived. Prior to making the deposition I had had no opportunity to refresh my recollection in any way.

Recross Examination:

After the telephone conversation with Mr. Gilstrap with [254] respect to the proceeds of the Birla Bros. drafts on May 8, 1931, I believe Mr. McDuffie immediately cabled the bankers of the Richfield Oil Company at Calcutta to stop payment to the Wells Fargo Bank on the proceeds of these drafts.

Plaintiff then offered in evidence the Proof of Claim filed by Wells Fargo Bank & Union Trust Co. in the Richfield Oil Company receivership proceeding which was entitled "The Republic Supply Company of California, a corporation, Complainant, versus Richfield Oil Company of California, a corporation, Defendant," and said document was received in evidence and marked Plaintiff's Exhibit 120. Said Proof of Claim stated that Richfield Oil Company of California was indebted to Wells Fargo Bank & Union Trust Co. in the sum of $636,189.95 for moneys loaned to the Richfield Oil Company of California, and that this indebtedness was evi-

(Testimony of Robert L. Hall.)

denced by a promissory note dated July 12, 1930, together with interest at the rate of 6% per annum. Said Proof of Claim also set out a further indebtedness in the sum of $147.67 for miscellaneous amounts expended on behalf of Richfield Oil Company. Said Proof of Claim further stated that there were no offsets or counterclaims to said debt, that no Judgment had been rendered for the indebtedness, and that no claim to preference in payment from the receiver had been made. Said proof of claim further stated that no securities were held by claimant for said indebtedness. Said document was signed by F. I. Raymond, affiant, as Vice President and Cashier of Wells Fargo Bank & Union Trust Co. The date of said document was March 28, 1931.

Plaintiff then offered in evidence a Proof of Claim filed in said receivership proceeding by Wells Fargo Bank & Union Trust Co. and said document was received in evidence and marked Plaintiff's Exhibit 121. Said Proof of Claim was signed by A. J. Callahan, Assistant Trust Officer of Wells Fargo Bank & Union Trust Co. and was dated March 28, 1931. Said document stated that Richfield Oil Company of California was indebted to Wells Fargo Bank & Union Trust Co. in the [255] sum of $1,028.85 for services rendered as registrar of the preferred and common stock of the Richfield Oil Company of California. Said document further stated that there were no offsets or counterclaims to said

(Testimony of Robert L. Hall.)

debt, that no Judgment had been rendered thereon, and no claim to preference in payment from the receiver was made except with reference to the sum of $846.50 which was represented by a check drawn by Richfield Oil Company in favor of Wells Fargo Bank and returned to the Wells Fargo Bank with the notation "Refer to Maker." Said Proof of claim further stated that no securities were held by claimant for said indebtedness.

Thereupon plaintiff rested.

DEFENDANT'S CASE.

W. J. GILSTRAP

was called as a witness for defendant and testified as follows:

I am Assistant Cashier and Assistant Manager of the Foreign Department of the Wells Fargo Bank & Union Trust Co. I have been with the Wells Fargo Bank for about 15 years and in the Foreign Department for the entire time. I was Assistant Cashier and Assistant Manager of the Foreign Department in the fall of 1930. I am familiar with the various methods of doing business of foreign exportation. Prior to the fall of 1930, we had had some business with the Richfield Oil Company of a letter of credit nature. In the course of these transactions I met Mr. Hall of the Richfield Oil Company.

(Testimony of W. J. Gilstrap.)

In the latter part of August, 1930, Mr. Hall came to San Francisco and called on me. I should say this was in the neighborhood of August 22d, or within a day or two of that time. [256] During the first part of the conversation only Mr. Hall and I were present. Mr. Hall said he was dissatisfied with the treatment he was receiving in connection with his foreign collections from the bank with which he was then placing them, and that he intended, providing we were willing to take on the business, to give us all of their collection business. I suggested to Mr. Hall that if the business was an extension of credit it might be more economically handled from Richfield's point of view by means of bank acceptances rather than by a direct discounting of foreign collections. I am positive that I suggested that to Mr. Hall and that Mr. Hall did not suggest it to me. I called Mr. Hellman, the vice president in charge of our Foreign Department, into the conversation and reviewed the conversation that had taken place between Mr. Hall and myself. Mr. Hellman suggested that rather than to state a line that he would give Richfield, provided we would give them any line, he preferred to have Mr. Lipman, the president of the bank, pass upon whether or not we would do so.

Mr. Hall made no statement to me on this occasion with respect to any interest which he had in the foreign business of Richfield Oil Company.

He made no statement to me on this occasion

(Testimony of W. J. Gilstrap.)

with respect to keeping any business of the Foreign Department separate from other business of Richfield Oil Company with the bank.

Mr. Hellman then took Mr. Hall downstairs with him. When Mr. Hall returned he stated that he had seen Mr. Lipman and that he was returning to Los Angeles to submit to his superiors for their decision the question as to whether the export business and the acceptance credit would be availed of. I was informed either by Mr. Hall or by Mr. Hellman that the amount of the line which Mr. Lipman had designated was about $150,000 in addition to the indebtedness, [257] the line which Richfield already had.

When Mr. Hall returned after his interview with Mr. Lipman he made no statement with respect to his having an interest in the foreign business of the Richfield Oil Company or that these transactions with the Foreign Department of the Richfield Oil Company were to be kept separate from other business Richfield had with the bank.

So far as I know I only remember seeing Mr. Hall on one occasion in August, 1930.

I wrote the letter, Defendant's Exhibit "D", which refers to a telephone conversation with Mr. Hall. In that telephone conversation he said that Richfield had decided to avail themselves of the acceptance credit and asked me to send down the necessary forms for their signature. The form of acceptances and the acceptance agreement were sent.

(Testimony of W. J. Gilstrap.)

On October 6th, Mr. Hall, accompanied by Mr. Pope, came to my desk. Mr. Hall told me that Mr. Pope had been sent to educate himself with every detail of the acceptance business; that it was something entirely new to him as it was also to the Richfield Oil Company, and that they wanted Mr. Pope to familiarize himself with every detail of it so that he could handle their end of the arrangement. Mr. Pope had with him the acceptance agreement marked Plaintiff's Exhibit 16 and the acceptances which are in evidence as Plaintiff's Exhibits 17 to 20 inclusive. Mr. Pope handed the acceptance agreement and the acceptances to me.

I told him that the acceptance credit which we had granted Richfield was a continuous one, that is, a revolving one, which might be availed of by them to an extent not exceeding $150,000 in acceptances outstanding at any one time; that the acceptance agreement which he had given us was intended to cover any [258] acceptances which might later be executed by us, within a limit of $150,000 outstanding at any one time; that the acceptance agreement did not stipulate the exact amount of acceptances, that is the exact amount for which each acceptance was drawn, because we did not know nor did they know nor did any one know in what amount the acceptances would be issued and when they would be issued. That would be dependent upon the collections which later would be forwarded to us. Likewise, no mention could be made, as I told

(Testimony of W. J. Gilstrap.)

Mr. Pope, of the collections which were the security for this particular credit, because for the same reason neither they nor we knew exactly what collections would later be sent us. Rather than have them have to execute a new acceptance agreement each time that a new acceptance was asked for or each time that they sent us a new collection, I explained to Mr. Pope that this one agreement was expected to be a blanket one. I also explained to Mr. Pope that the reason the drafts were to be drawn at 90 days sight was because a ninety day sight draft commands a better rate of discount in the open market than would one of a longer maturity.

In the course of that conversation I gave Mr. Hall the receipt marked Plaintiff's Exhibit 21.

As Mr. Pope said he was entirely unfamiliar with it, and as Mr. Hall indicated that he was, I explained to them in detail exactly how the acceptances would be executed by us and then how they would be used by us and discounted and the proceeds credited to the account of the Richfield Oil Company, or held at the disposal of the Richfield Oil Company, and how the acceptances would ordinarily later find their way into the hands of some investor in the open market; that the acceptances would on their due date be presented to us for payment; that as stated in the agreement the Richfield Oil Company must provide us with funds to meet the matur- [259] ing acceptances at

(Testimony of W. J. Gilstrap.)

least one day before their maturity. Those funds, of course, might come from the proceeds of collections which were the security for the acceptances, or in the event of any deficiency, that is to say, not sufficient proceeds being received at the time we would request the amount necessary to retire the acceptances in our hand, that any deficiency must be made up by the Richfield Oil Company. I did not state that the proceeds from the drafts which were security for the acceptances would have to be received in San Francisco at least one day prior to the maturity of the acceptances. I stated that the acceptances were to be paid or had to be paid by us on their due date to the holder of the acceptances, and that one day prior to the maturity of the acceptances we must be placed in funds sufficient to meet the maturing acceptances by the Richfield Oil Company.

I also explained to Mr. Pope that if for any reason the proceeds of the bills that might be deposited with us were not received by us in time to meet any maturing acceptances, the deficiency that the Richfield Oil Company might have to make good might be in part or in whole obtained by renewal acceptances either against bills which were originally put in as security for the original acceptances or against new bills which might later have been deposited; in other words, on renewal acceptances against some bills against which the first 90 day

(Testimony of W. J. Gilstrap.)

acceptances were issued, or as against any later bills that might have been deposited.

Either Mr. Hall or Mr. Pope then stated that they were preparing a shipment to Birla Bros. I believe that in some previous conversation Mr. Hall had outlined to me in a general way the business that he did with Birla Bros. They stated they wanted to raise as much money as possible against this particular shipment, and asked how much we would advance against the shipment. [260]

Defendant's Exhibit "B" was a cable received by us on October 6th from our correspondent bank at Calcutta. It was received before my conversation with Mr. Hall and Mr. Pope.

After Mr. Hall and Mr. Pope requested that we advance against the shipment as much as we could, they said that one-half of the shipment was drawn for at sight and one-half would be drawn for at 180 days after sight. I showed both Mr. Pope and Mr. Hall the report that we had received from our correspondent bank concerning the standing of Birla Bros. and told them that it was in our opinion not a good report. Mr. Hall stated that Birla Bros. were in his opinion a very good house. I told them that I could not name the amount which we would advance against the shipment and that I would have to consult with the other officials in the Foreign Department. I spoke first to Mr. Hellman. Before seeing Mr. Hall and Mr. Pope again, I spoke to Mr. Leuenberger. Mr. Leuenberger accompanied me to my desk where

(Testimony of W. J. Gilstrap.)

Mr. Hall and Mr. Pope were seated. He informed Mr. Hall and Mr. Pope that we would advance the approximate amount of the sight drafts which were drawn for fifty per cent of the value of the shipment. Mr. Hall and Mr. Pope still endeavored to have us advance more against it, but the decision as Mr. Leuenberger said was that we would advance the approximate amount of the sight drafts which amounted to about fifty per cent of the value of the shipment.

Nothing was said on the occasion of this conference with respect to 180 day paper or with respect to taking 180 day paper on any other basis than short term drafts.

Nothing was said on the occasion of this conference by Mr. Hall or by Mr. Pope that these transactions with our foreign department were to be kept separate and apart from other transactions with the Wells Fargo Bank, nor was anything said at this [261] conference that Mr. Hall had an interest in the business of the Foreign Department of the Richfield Oil Company.

I told them that acceptances would be executed by us as they were required by Richfield up to the extent of not exceeding $150,000 outstanding at any one time, provided that at the time of their request we had collections to an amount of at least the amount of acceptances outstanding and the amount that they then requested be satisfactory to us to allow of our executing additional acceptances.

There was no discussion at this conference with

(Testimony of W. J. Gilstrap.)

respect to the financial condition of Richfield Oil Company. There was no discussion of that kind in any of the conferences.

I next saw Mr. Hall two days later, on October 8th, at the Wells Fargo Bank. He brought two letters referring to four drafts—2 at 180 days and 2 at sight, on Birla Bros. with the shipping documents and a letter asking us to execute against the shipment $115,000 worth of acceptances. He delivered to me the letter marked Defendant's Exhibit "A". The original of the documents marked Plaintiff's Exhibits 22 and 23 accompanied by Defendant's Exhibit "A", were delivered to me by Mr. Hall at the same time. The 4 drafts, 2 at sight and 2 at 180 days, on Birla Bros., accompanied the letter, together with invoices referring to 2 shipments, insurance policies and original bills of lading covering each of the 2 shipments. No other documents were given to me by Mr. Hall at that time. We executed $115,000 worth of acceptances and gave Mr. Hall a credit memorandum to the account of the Richfield Oil Company showing a credit to their account in the amount of $115,000 less the discount and commission charges.

Nothing was said this morning with respect to keeping these transactions separate and apart from any other transactions [262] of the Richfield Oil Company, nor did Mr. Hall make any statement that he had some sort of an interest in the business of the Foreign Department of the Richfield Oil Company.

(Testimony of W. J. Gilstrap.)

He made no comments whatsoever with respect to Defendant's Exhibit "A".

We sent the 4 drafts with the accompanying shipping documents to our correspondent bank, Netherlands Trading Society, at Calcutta, for collection.

The Wells Fargo Bank has permanent records relating to the drafts deposited and transmitted by it to its foreign correspondent for collection. This record is a copy of the remittance letter addressed to the correspondent bank, which contains a detailed description of the drafts and the documents and everything pertaining to it. The form which we use for our collections and the blanks which we transmit are all numbered consecutively. These records are kept under my supervision in the Foreign Department. We kept records with reference to the Birla Bros. shipment.

This document which purports to be a carbon copy of a document bearing the numbers 46831, and entitled "File correspondence" is our permanent record with reference to the transmittal of Richfield Oil Company's draft No. 103006a to Birla Bros. Ltd. for the sum of $55,900.76. It is a carbon copy of our letter which was forwarded to our bank correspondent at Calcutta. The words "Security for acceptance, proceeds to Clemo" written in pencil in the right-hand corner of the document are in the handwriting of Mr. Desmond, a clerk employed in our Foreign Department. He was employed in the

(Testimony of W. J. Gilstrap.)

Foreign Department at the time this transaction took place. That entry was made at the same time this document was written and it was made under my direction. It was made at the same time as the forwarding of these drafts. [263]

At this point counsel for plaintiff was given permission to cross examine the witness on the pencilled notations which appear on this document. In this respect said witness testified as follows:

The pencilled notations were placed on these documents by a clerk in the Foreign Department by the name of Desmond. His desk is approximately 25 or 30 feet apart from my desk. His work is solely confined to foreign collections. I had knowledge of the typing on this document. I did not actually see it typed. I did not actually see Mr. Desmond or any one else write these words upon this draft. This document was never in the possession of Mr. Hall at all. It was a document prepared in the Foreign Department of the Bank after Mr. Hall had turned the drafts over to me. Eliminating the typing upon this document, it is nothing more or less than a form, and at the time this particular document was used we had a number of such forms in the Foreign Department of the bank. I do not recall having had this document in my hand after it had been typed, but I had seen the original going out to the bank.

I cannot definitely say when for the first time this particular document came under my observa-

(Testimony of W. J. Gilstrap.)

tion. I could not say whether it came within my observation within two or three months after the original transmittal letter was sent. I could not definitely say when I saw that after it was written. It is impossible for me to say now when for the first time approximately I saw this document. The first time I can definitely say I saw it was when this suit was discussed. That was possibly three or four weeks ago. I am quite sure I saw this document three or four weeks ago. When I said that I did not know when I first saw this document, I knew that I had seen it three or four weeks ago, but I did not know that that was the first time I had seen it. Until three or four weeks ago, I did not know the words appearing on this document in lead pencil had been placed on the document.

On direct examination said witness testified further [264] as follows:

I gave our counsel this document at the time we were preparing for trial on the first calling of this case. That was several weeks ago. At that time it had on it in pencil the words "Security for acceptance, proceeds to Clemo." I gave the instructions to Mr. Desmond with respect to putting that language on the document at the same time that I handed the draft to him to write the schedule.

(The foregoing testimony commencing with the words, "I gave the instructions to Mr. Desmond," was objected to by counsel for com-

(Testimony of W. J. Gilstrap.)

plainant on the ground it was incompetent, irrelevant and immaterial and not binding on complainant. Objection was overruled and exception noted.)

The original of this document is in the hands of the Calcutta correspondent. This document is the carbon copy for the bank's permanent record and is the record which is kept by the bank with respect to all collections forwarded to foreign countries. It is a custom in the Foreign Department of the Wells Fargo Bank to make notations upon the opening of a new series of transactions. This was the first transaction we had had with Richfield and I wanted to be sure there could be no mistake made about these bills being security for acceptances, and as an initial transaction we wanted to be sure to start it correctly.

(Counsel for complainant moved to strike out the foregoing testimony commencing with the words, "This was the first transaction," on the ground it was the conclusion of the witness, argumentative, and not responsive to the question. Objection was overruled and exception noted.)

Defendant then offered in evidence the document hereinabove referred to and the same was received in evidence and marked Defendant's Exhibit "F". At this point, however, the pencilled memorandum was excluded from evidence for the reason that

(Testimony of W. J. Gilstrap.)

it had not been sufficiently authenticated. (This pencilled memorandum was subsequently admitted in evidence after having been authenticated by the witness Desmond, as will hereinafter appear.) Said document was dated October 8, 1930, and bore the numbers 46831, and was denominated "File correspondence." It was a copy of a letter sent to Netherlands Trading Society stating that draft No. 103006a in the sum of $55,900.76, drawn on Birla Bros. Ltd. at sight was enclosed for col- [265] lection, and directed that when paid, remittance should be made to Chase National Bank, New York, for the credit of the account of Wells Fargo Bank. It also stated that the customer of the bank was Richfield Oil Company of California.

Defendant then offered in evidence another document similar to that marked Defendant's Exhibit "F", and the same was received in evidence and marked Defendant's Exhibit "G". Said document was in the same form as that marked Defendant's Exhibit "F" with the exception that it bore the number 46832, and referred to the 180 day draft on Birla Bros., No. 103006b, in the sum of $55,900.75. A pencilled notation to the same effect as that appearing on Defendant's Exhibit "F" was excluded, subject to further identification, as hereinabove set forth with respect to Defendant's Exhibit "F".

Defendant then offered in evidence another document similar to that marked Defendant's Exhibit

(Testimony of W. J. Gilstrap.)

"F", and the same was received in evidence and marked Defendant's Exhibit "H". Said document was in the same form as that marked Defendant's Exhibit "F" with the exception that it bore the number 46833, and referred to the sight draft on Birla Bros., No. 103004, in the sum of $63,950. A pencilled notation to the same effect as that appearing on Defendant's Exhibit "F" was excluded, subject to further identification, as hereinabove set forth with respect to Defendant's Exhibit "F".

Defendant then offered in evidence another document similar to that marked Defendant's Exhibit "F", and the same was received in evidence and marked Defendant's Exhibit "I". Said document was in the same form as that marked Defendant's Exhibit "F" with the exception that it bore the number 46834, and referred to the 180 day draft on Birla Bros., No. 103005, in the sum of $65,950. A pencilled notation to the same effect as that appearing on Defendant's Exhibit "F" was excluded, subject to further identi- [266] fication as hereinabove set forth with respect to Defendant's Exhibit "F".

(Counsel for complainant objected to introduction of the foregoing Defendant's Exhibits "F", "G", "H" and "I" upon the ground they were incompetent, irrelevant and immaterial, not binding on complainant, self-serving, and no foundation laid. Objection was overruled and exception noted.)

(Testimony of W. J. Gilstrap.)

Said witness testified further as follows:

Accompanying the original of these documents were the drafts to which the documents referred, which were sent to our correspondent in Calcutta, India.

Shortly thereafter, we began to receive certain collection items from Richfield Oil Company. The next occasion on which we heard from Richfield Oil Company was upon receipt of the letter marked Plaintiff's Exhibit 26, referring to draft No. 103009. Subsequently there was handed to us with letters of transmittal a great volume of drafts drawn upon various persons in foreign countries by Richfield Oil Company, and after receipt of the letters of transmittal we issued deposit receipts in the same form as Plaintiff's Exhibit 24. These documents contained no differentiating memoranda or language, and all drafts were in substantially the same form as the four drafts on Birla Bros. first deposited. The letter of transmittal, dated January 8, 1931, being Plaintiff's Exhibit 82, refers to the drafts drawn by Richfield on Birla Bros., No. 13107 and No. 13106 for the sum of $11,107.50 at sight and $23,607.50 at 180 days sight. These documents were received by us with the letter of transmittal in the same form as the previous letters. At that time, namely, January 8, 1931, the Richfield Oil Company had not paid the entire amount of the acceptances.

(Testimony of W. J. Gilstrap.)

About the 16th of October, 1930, at Mr. Hall's request, I went to Los Angeles. No business was transacted while I was down there. Mr. Hall showed me no list of drafts. He simply showed me the manner in which they prepared the documents, what a particular [267] man's duty was, and that they made a great effort to keep everything in as good order as it was possible to keep it.

Mr. Hall made no statement to me on that visit to Los Angeles that he had an interest in the business of the Foreign Department of the Richfield Oil Company, nor did he say anything on that occasion that all the transactions with the Foreign Department of Richfield Oil Company were to be kept separate and apart from other transactions of the Richfield Oil Company.

Referring to Plaintiff's Exhibit 28, being a letter from Mr. Lyons to us speaking about a draft reserve of $9,734.16, I understood the use of the words "Draft Reserve," although it is a term that we do not generally use. These words had not been used in any of the conferences held with the officials of the Richfield Oil Company prior to October 13, 1930. Subsequently in our correspondence with Richfield we adopted their verbiage.

Prior to the deposit of the two Birla Bros. drafts with the letter of January 8, 1931, one of which is in dispute in this litigation, nothing was said by any of the officials of the Richfield Oil Company with respect to the deposit of the drafts

(Testimony of W. J. Gilstrap.)

nor was there any correspondence or any conversations that in any manner differentiated them from any other drafts in this transaction.

I wrote the letter dated December 16, 1930, marked Plaintiff's Exhibit 93. The proceeds of the drafts therein mentioned were applied in anticipation of the earliest maturing acceptances. We use the term "anticipation of acceptances" to apply to any funds which are received by us prior to the actual maturing of the acceptances and which are to be used to meet the acceptances upon maturity. The acceptance is not actually taken in and cancelled on that date because it is in the hands of some investor in the open market. It is presented at its maturity for payment. [268]

Plaintiff's Exhibits 95, announcing receipt of the proceeds on draft No. 103010; 97, referring to receipts of draft No. 113014; 98, referring to proceeds of draft No. 103009; 99, referring to proceeds of draft No. 113013; 100, referring to the proceeds of draft No. 113001; 101, referring to the proceeds of draft No. 113023; 103, referring to the proceeds of drafts No. 123007, No. 113012, and No. 103030; 104, referring to the proceeds of drafts No. 113010, No. 113017 and No. 13007; 107, referring to the proceeds of drafts No. 113009, No. 113018 and No. 123008 and No. 103012, were all written by me, and they all refer to the collection of drafts and the application of the proceeds against acceptances. Before I wrote the letter marked Plaintiff's Exhibit

(Testimony of W. J. Gilstrap.)

107, which states, "We are holding in accordance with the notice given you by our wire of January 16th," I spoke to Mr. Hellman and after my conversation with him I wrote the letter. Thereafter Wells Fargo Bank received a telegram, Plaintiff's Exhibit 109. Thereafter we sent the telegram marked Plaintiff's Exhibit 110, and received a letter, marked Plaintiff's Exhibit 106. This letter requested that we transfer to the receiver the balance of $7,749.50. I turned that letter over to Mr. Hellman, who is vice president in charge of the Foreign Department and who within certain limitations makes decisions for the Foreign Department. After turning the matter over to him, I received instructions from him with reference to sending the proceeds to the Richfield Oil Company, and thereupon I wrote the letter which is marked Plaintiff's Exhibit 108, and accompanying that letter is an announcement that we were crediting the proceeds therein mentioned to the account of Richfield.

The proceeds of certain drafts which were paid prior to January 1, 1931, were credited to the account of Richfield. I don't remember any definite request on the part of Richfield to turn these [269] proceeds over to them. Apart from those proceeds the balance of all other proceeds of drafts were applied on account of acceptances in the order in which the proceeds were received.

On May 8, 1931, Mr. Hall telephoned me from Los Angeles inquiring as to how much it would cost

(Testimony of W. J. Gilstrap.)

to transfer the proceeds of certain Birla Bros. drafts by cable rather than by mail. I called Mr. Hall again later. Between the two calls, I saw Mr. Hellman and discussed the contents of the conversation had with Mr. Hall. I called Mr. Hall back on the telephone and told him that the bank had decided to take the proceeds of the two Birla Bros. drafts deposited on October 8th and apply them against Richfield's indebtedness. Mr. Hall said he was surprised and wanted to know if there was not some way in which this decision could be reversed. Several days later, Mr. Hall came to San Francisco and came to my desk in the Foreign Department. The substance of his conversation was to the effect: "Do you know what you are doing to me, do you know what you are doing to the Richfield Oil Company by taking these funds? I have an interest in these transactions and they were supposed to be kept separate, and I have come up here now to have these funds restored to Richfield if it is at all possible."

I told Mr. Hall there was nothing I could do and called Mr. Hellman into the conversation. Mr. Hall repeated the plea to Mr. Hellman that he had made to me. Mr. Hellman told him there was nothing he could do and I took Mr. Hall down to see Mr. Eisenbach and he repeated his plea to Mr. Eisenbach. Mr. Eisenbach, Mr. Hall and I went to Mr. Motherwell's office and Mr. Motherwell told Mr. Hall that nothing he could say would change our

(Testimony of W. J. Gilstrap.)

minds. During these conferences Mr. Hall said that he had an interest in these transactions and that they were supposed to have been kept separate. Prior to this visit of Mr. Hall's in May, 1931, these statements had never been made in my presence or to me at any time. The first [270] time I heard either of these statements was in May of 1931, on the occasion of Mr. Hall's visit to Wells Fargo Bank.

Defendant then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to William C. McDuffie, Receiver, dated May 11, 1931, and said letter was received in evidence and marked Defendant's Exhibit "J". Said letter was in the words and figures as follows:

"We refer to your bill No. 103012 drawn on Bueno y Cia., Cali, Colombia, for $2,441.00.

Several payments were made on account of this bill and there remained an unpaid balance of $471.00. This balance has now been paid and the net returns amount to $469.06, particulars as follows:

Balance paid	$471.00
Less correspondents charges	1.94
	$469.06

In accordance with our telephone conversation, we are applying this sum against your indebtedness to us.

Yours very truly,"

(Testimony of W. J. Gilstrap.)

Defendant then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to William C. McDuffie, Receiver, dated May 19, 1931, and said letter was received in evidence and marked Defendant's Exhibit "K". Said letter was in the words and figures as follows:

> "We refer to your bill No. 123014 drawn on Ricardo Valezques, Cali, for $1219.00.
>
> This bill has now been paid and the net returns amount to $1245.11 as per attached advice. We are applying this amount against your indebtedness to us.
>
> Yours very truly,"

Defendant then offered in evidence a letter from Wells Fargo Bank & Union Trust Co. to William C. McDuffie, Receiver, dated June 16, 1931, and said letter was received in evidence and marked Defendant's Exhibit "L". Said letter was in the words and figures as follows: [271]

> "We refer to your bills Nos. 103005 and 103006 B. drawn on Birla Bros., Ltd., for $63,950.00 and $58,900.75, respectively.
>
> These bills have now been paid and the net returns amount to $119,512.54, particulars as per slips attached.
>
> We are applying this amount against the indebtedness to us of the Richfield Oil Co. of California.
>
> Very truly yours,"

(Testimony of W. J. Gilstrap.)

Said witness testified further as follows:

The other 180 day Birla Bros. draft in the sum of approximately $23,000, deposited on January 8, 1931, was paid and the proceeds thereof retained in the same manner by Wells Fargo Bank.

The 2 drafts represented in Defendant's Exhibit "L", the drafts referred to in Defendant's Exhibit "J" and Exhibit "K" and the 180 day Birla Bros. draft deposited January 8, 1931, constitute the five drafts in dispute in this litigation.

Cross Examination:

Between the 8th day of October, 1930, and the 8th day of May, 1931, Wells Fargo Bank sent no communication of any kind to Richfield Oil Company or to the receiver of the Richfield Oil Company indicating that the bank was holding the 180 day sight drafts deposited with us either as security for any outside indebtedness or that the bank intended to exercise a bankers lien as against the proceeds. Wells Fargo Bank never wrote to any of the officials of the Richfield Oil Company indicating that the bank was holding either of the 180 day drafts as security under the acceptance agreements or as security for any of the acceptances, nor was there any such communication respecting the 180 day Birla Bros. draft that was deposited on the 9th day of January, 1931. There were no telegrams relating to the 180 day drafts indicating that the bank was claiming any lien upon these drafts or

(Testimony of W. J. Gilstrap.)

that these drafts were being held as security for the acceptances. In none of the frequent telephone conversations [272] occurring between me and Mr. Hall did I ever mention that the bank was claiming that any one of these three 180 day Birla Bros. drafts were being held by the bank as security under the acceptances or the acceptance agreement.

The Wells Fargo Bank keeps a book showing the amount of acceptances executed. When an acceptance agreement is accepted or received by the bank, no entry is made in any book kept by the bank showing the receipt of the acceptance agreement. There is no book kept by the bank in which is entered the security which the bank receives as security under the acceptance agreements or as security for the payment of acceptances. There are two books, one in which the liability of the various concerns is tabulated, and another which is entitled an acceptance register. The first book would show the liability of Richfield Oil Company as it drew drafts for acceptances by the bank. Aside from these two books and aside from the carbon copies of the letters of transmittal sent by our Foreign Department to our foreign correspondents, there is no record of any kind kept in the bank showing the securities, if any, that are delivered to the bank to be used under the acceptance agreement or as security for acceptances executed and released by the bank.

(Testimony of W. J. Gilstrap.)

I knew that for a considerable period prior to the months of August, September and October, 1930, the Richfield Oil Company had borrowed money from the Wells Fargo Bank, and I knew that during that period of time the Richfield Oil Company had borrowed money without putting up security with the bank. I knew that at the time these preliminary negotiations occurred to which I have testified there was a substantial indebtedness outstanding payable by the Richfield Oil Company to the bank which would mature some time during the early part of October, 1930. I knew that that indebtedness aggregated approximately $625,000. Prior to October 6, 1930, I [273] did not know of any security which the bank held to secure the payment of that indebtedness.

Mr. Hall did not visit the bank during the month of August, except upon the one occasion testified to by me. I know that that was slightly after the middle of the month. I made no memorandum of the visit paid to me on that occasion. I made no memorandum at any time with respect to the conference occurring between me and Mr. Hall. As Manager of the Foreign Department I have been kept pretty busy during the last several years. Between the date on which Mr. Hall first came to see me in the month of August, 1930, and the commencement of this trial, I have undoubtedly attended to many thousands of transactions involving transactions with the Foreign Department. I have also come in con-

(Testimony of W. J. Gilstrap.)

tact with many thousands of people with each of whom I have had conferences, sometimes lasting a considerable period.

No entry of any kind was ever made by me respecting any of these conferences with Mr. Hall from which I could refresh my recollection as to what occurred.

At the conference with Mr. Hall on August 9, 1930, I did not tell Mr. Hall that if an acceptance agreement were executed the security put up under the acceptance agreement would secure any other indebtedness that might be due from the Richfield Oil Company to the bank. I did not tell him that any securities that might be put up under the acceptance agreement, held as security for the payment of the acceptances, could be seized by the bank after the acceptances were paid to satisfy the indebtedness due from Richfield Oil Company to the bank approximating $625,000. I did not tell Mr. Hall that by placing securities of any kind under the agreement or under the acceptances, the Richfield Oil Company's indebtedness to the bank would be secured. [274]

The witness' attention was at this point called to a book of Wells Fargo Bank & Union Trust Co. produced at the demand of counsel for plaintiff, entitled "Acceptance Register." With respect to this book, said witness testified as follows:

There is nothing in this Acceptance Register indicating the character of the security that was lo-

(Testimony of W. J. Gilstrap.)

cated under the acceptances or under the acceptance agreement.

Plaintiff then offered in evidence a sheet taken from a book of Wells Fargo Bank & Union Trust Co. produced at the demand of counsel for plaintiff and entitled "Commercial Credits, Wells Fargo Bank & Union Trust Co." Said sheet was entitled "Acceptance Credit." Said document was received in evidence and marked Plaintiff's Exhibit 122. Said document showed that an acceptance credit had been entered in favor of Richfield Oil Company in an amount of $150,000. The first column on said sheet was entitled "Date Negotiated," and showed that the acceptances in the sum of $115,000 were negotiated on October 6, 1930; the acceptance for $5,000 was negotiated on October 6, 1930, the acceptance for $10,000 was negotiated on October 6, 1930, and the acceptance for $25,000 was negotiated on November 28, 1930. The next column was entitled "Ship." Underneath the first line in this column are contained the words "Silverray" and "Silverhazel." The next column was entitled "Documents Drawn Against." On the first line of this column, opposite the word "Silverray" appeared the words and figures "17.000 C/S Kerosene 540 drums fuel oil," and opposite the word "Silverhazel" hereinabove referred to, the words and figures "95.000 C/S Kerosene." The next column was entitled "Documents Received," and referred to the date of the receipt of the shipping documents. The next column

(Testimony of W. J. Gilstrap.)

was entitled "Amount Drawn," and referred to the amount of the acceptances drawn by Richfield Oil Company. It showed first the drawing of the [275] $115,000 worth of acceptances; next the $5,000; next the $10,000 worth of acceptances, and last the $25,000 worth of acceptances. The next column was entitled "Due in San Francisco." Under this column appeared the dates when the various acceptances would be due. This column showed the $115,000 worth of acceptances was due January 6, 1931; the $5,000 worth of acceptances was due on January 13, 1931; the $10,000 worth of acceptances was due on January 19, 1931, and the $25,000 worth of acceptances was due February 26, 1931. The next column was entitled "Due in London," but as hereinafter shown by the testimony of the witness, the title of this column had nothing to do with the entries thereunder. The entries under this column showed the amounts and the dates of the proceeds received and applied in anticipation of acceptances and the interest allowed upon such proceeds. The next column was entitled "Balance Available." This column showed the balance of the value of the acceptances which Richfield Oil Company of California was still entitled to draw on its credit of $150,000 after having partially utilized some of the acceptance credit. The next column was entitled "Date Paid." This column showed the dates upon which the acceptances were finally paid.

(Testimony of W. J. Gilstrap.)

Under the columns hereinabove referred to entitled "Ship" and "Documents Drawn Against", appear the words "Supported by B/C 46843" opposite the acceptance of $10,000, the shipping documents for which were received on October 21, 1930. Also under said two columns last mentioned appeared the word "Cancel" opposite the sum named under column "Amount Drawn" of $115,000. Said document is more fully described in the testimony of the witness hereinafter set forth. [276]

Said witness testified further as follows:

This sheet is not made to fit this particular individual transaction. It is a form which we used for this transaction but the sheet is not designed to fit this particular transaction. We have no sheets which fit this particular transaction, but we use this particular sheet for all such transactions. The titles on this sheet are used on certain other transactions, but in this particular case certain titles do not apply to this particular transaction.

On the first line appear the words "Silverray" and "Silverhazel". They refer to the two ships. The words "Documents Drawn Against" refer to invoices. The column "Due in London" does not apply in this case because London had nothing to do with this transaction. It is used here to put the dates and amounts and the anticipation of the acceptances. Opposite the words "Silverray" and "Silverhazel", which are the names of the ships, appears "Allowed Interest $115,000 Anticipated

(Testimony of W. J. Gilstrap.)

12/16". That means the date of the payment of the proceeds in San Francisco. Under the title "Balance Available" appears the figure $35,000. The credit that we extended Richfield was $150,000; the amount used in the first instance was $115,000; so the clerk carried forward the balance here as the amount then available to Richfield.

There is no reference on this sheet to any 180 day drafts.

The entries extended on this sheet with respect to the $5,000 acceptances are similar to the first entries with respect to the $115,000 worth of acceptances. There is nothing upon this sheet indicating the documents against which it was drawn or the security that was put up. [277]

With respect to the $10.000 acceptance, appears the entry "Supported by B/C 46843". That is our bill for collection. This entry indicates that the $10,000 acceptance was supported itself by B/C 46843. B/C46843 refers to the draft referred to in the letter of transmittal dated October 2. 1930, which was Richfield Oil Company's draft No. 103010 for $11,031.14. That portion of the amount Richfield Oil Company had available for the execution of acceptances by reason of our having that draft was used by that $10,000 acceptance. This record does not show that any draft or other security was put up for that $10,000 acceptance other than our draft No. 46843.

(Testimony of W. J. Gilstrap.)

With respect to the next transaction of November 28, 1930, regarding the acceptances for $25,000, there is no indication upon this sheet which discloses the security, if any, that was put up for the issuance of those acceptances.

All of the figures that appear in the column "Due in London" represent entries made upon receipt of proceeds in anticipation of the due date of the acceptances. The column "Date Negotiated" is intended to show the date of the draft and the column "Documents Received" is intended to show the date the acceptance was executed. The column "Amount Drawn" discloses the total amount of the acceptances executed at one time. The column "Date Paid" indicates the date of the payment of the acceptances.

With respect to the word "Cancel" which appears on this sheet, this credit was originally issued for $150,000. It was increased by the amount of $5,000, making a total amount of $155,000. The total of $155,000 was then used. With the maturity of $115,000 of acceptances on January 6th, the clerk must pass a bookkeeping entry, because this is a revolving credit, so he increased the $115,000 showing that the amount available to Richfield that is [278] here shown under this column on January 6th, is $115,000.

At the time the $5,000 acceptance was obtained, which exceeded the $150,000, it was requested that a new agreement be executed, and a new acceptance

(Testimony of W. J. Gilstrap.)

agreement was in fact executed and sent up to the bank. Richfield Oil Company never at any time requested the issuance of any acceptances after the date upon which the $155,000 worth of acceptances were paid.

The witness' attention was then called to letters of transmittal to the foreign correspondent of Wells Fargo Bank, said letters relating to various drafts of Richfield Oil Company.

Said witness testified further as follows:

These comprise all the letters of transmittal sent by the bank from the 8th day of October, 1930, to the 14th day of January, 1931.

With respect to the letter of transmittal dated October 9, 1930, relating to Richfield draft No. 103009, the bank's number being 46830, and the amount being $2,442.40, there is endorsed in lead pencil "Security for Acceptance, proceeds to Clemo". With respect to the letter of transmittal referring to draft No. 103010, our number being 46843, there is endorsed in lead pencil "Security for Acceptance, proceeds to Clemo". The same is true of the letter of transmittal referring to draft No. 103012, our number being 46945. There is no endorsement of any kind upon any one of the remainder of the letters of transmittal indicating that there was any security of any kind under any of the acceptances.

The letter marked Plaintiff's Exhibit 28 was read by me before we issued the $5,000 acceptance. Before I directed the release of that acceptance I read the

(Testimony of W. J. Gilstrap.)

words in this letter "Our records show that we have with your good bank a draft reserve of $9,734.16 against which no acceptances have been issued." I learned that [279] $9,734.16 represented the aggregate of two drafts, one for $2,442.40 and the other for $2,441.00, and the difference between the two Birla Bros. sight drafts and the $115,000 worth of acceptances issued by the bank. There was no reference in this communication to any 180 day drafts which had been deposited with the bank. After reading this letter I directed the transmission to Richfield Oil Company of an acceptance of $5,000. With that acceptance I transmitted a letter which I dictated. This letter is Plaintiff's Exhibit 29. There is nothing said in that letter about any further security being in our possession.

With respect to the letter marked Plaintiff's Exhibit 31, the acceptance which is referred to therein is the acceptance referred to in Plaintiff's Exhibit 122, amounting to $10,000, against which is the entry "supported by B/C 46843". No. 46843 referred to in our letter is the number of our transmittal letter. I did not use the word "earmarked". I know that it was supported as shown by our records by that particular draft. In response to the communication of the Richfield Oil Company, I did not indicate that there was anything wrong with the use of the word "earmarked" by Mr. Leuenberger in this letter. Mr. Leuenberger is my superior in the bank. He is an Assistant Vice President.

The only letters passing between Richfield Oil Company, so far as I recall, and the bank, in which

(Testimony of W. J. Gilstrap.)

security for acceptances is mentioned, are the letters to which I have referred relating solely to the two Birla drafts numbered 103104 and 103006a, the Velasquez draft, No. 103009, and the two other drafts No. 103010 and No. 103012. The three letters of transmittal referring to the bank's numbers 46840, 46843 and 46895 were grouped together and marked Plaintiff's Exhibit 123 for identification. The balance of the transmittal correspondence commencing with the bank's number 47291 and ending with 48629 was marked Plaintiff's Exhibit 124 for identification. [280]

Mr. Clemo is a clerk in the Foreign Department handling letters of credit and acceptances.

With respect to Plaintiff's Exhibits 22 and 23, the documents would not be delivered by our correspondent to India to the purchaser of the shipment until two things would occur: first, the sight draft would be paid in full, and second, the 180 day draft accepted. Through our correspondent we would have possession of the documents representing the shipment until the sight draft was paid in full and the 180 day draft was accepted. In San Francisco we issued some $115,000 in acceptances as against these two shipments. I knew at the time we executed and released the acceptances that the sight drafts aggregated $119,850. I knew that the only amount that could by any possibility become due upon the acceptances would be $115,000. The total liability which the bank on October 8th could suffer as a result of the release of these acceptances would only be

(Testimony of W. J. Gilstrap.)

$115,000. I knew at the time these acceptances were issued that the two drafts drawn on Birla Bros. would be payable at sight. I told both Mr. Hall and Mr. Pope that the acceptances would have to be paid by them before maturity. I knew that if the two sight drafts were not paid on presentation, our correspondent would retain for us the documents representing the shipment. I knew that before the documents would be released by our correspondent, our correspondent would have in its possession $119,850, or $4,850 in excess of the total liability of the bank upon the acceptances released on October 8th. I knew also that if the sight drafts were not paid when presented that the documents in our possession would not be turned over to the consignee. I knew that if the cargo or shipment was not taken by the consignee, the cargo would be sold and that the money coming to us would be paid. Not later than December 16, 1930, we had already received in our possession the sum of approximately $119,850.00 representing the proceeds of these two sight drafts less certain inconsequential charges, which was more than sufficient to liquidate in full the $115,000 worth of acceptances. [281]

There is nothing on the acceptance agreement wherein anything is said about a continuing guaranty or a revolving fund. We did not present to the plaintiff in this case any agreement except this form of agreement. I would not say that it is correct that upon acceptance, drafts are required only slightly in excess of the amount of the acceptances.

(Testimony of W. J. Gilstrap.)

The collections which are security for an acceptance or a line of acceptances must be at least the value of the acceptances executed, and they may be twice, five, ten or twenty-five times as much more, but they must be at least as much. What the bank desires to achieve as the result of a transaction such as this, is to be absolutely assured that acceptances will be paid when due, together with the charges.

This acceptance agreement contemplates a description of the drafts presented to the bank for acceptance. Nothing was filled in on the agreement. The agreement also contemplates that where documents are turned over to the bank as security for the acceptances, the documents themselves should be identified on the face of the agreement. The agreement contemplates on its face that the bank shall have in its possession at the time the agreement was signed and at the time the drafts were accepted and released, the documents or the security, which securities shall be designated upon the face of the agreement. The amount of acceptances outstanding could not be more than $150,000. The agreement does not say anything with respect to the amount outstanding. All of the answers which I have heretofore given with respect to the first acceptance agreement are applicable to the second agreement for $5,000.

In the ordinary acceptance transaction, the securities are in the possession of the bank when the acceptances are issued. In the ordinary case, the securities placed under the acceptance agreement

(Testimony of W. J. Gilstrap.)

are not necessarily securities upon which the proceeds can be collected in advance of the maturity of the acceptances.

I received no request or no demand from Richfield Oil Company prior to the appointment of the receiver to issue to it any acceptances in excess of $155,000. After the payment of the $115,000 [282] of acceptances, I sent no communication to Richfield Oil Company indicating to it that it could if it so desired have the benefit of additional acceptances. The bank had in its possession on December 16 a sufficient amount of money to liquidate in full any possible liability on the $115,000 worth of acceptances. Between the 16th of December, 1930, and the date of the appointment of the receiver, the Richfield Oil Company did not request the bank to issue any additional acceptances under this acceptance agreement.

On January 8, 1931, when the letter of transmittal to the Wells Fargo Bank with respect to drafts No. 13106 and No. 13107 on Birla Bros. was sent, there were still outstanding three groups of acceptances, one $5,000, another $10,000, and the other for $25,000. On that date we had in our possession moneys in anticipation of the $5,000 acceptance and the $10,000 acceptance, and approximately $2,000 or $3,000 applicable to the $25,000 acceptance. We had certain drafts which had been forwarded to our correspondent for collection which we claim were under the acceptance agreements and some of which plaintiff claims were not. In our letter of transmittal to our correspondent with re-

(Testimony of W. J. Gilstrap.)

gard to these drafts on Birla Bros. (Nos. 13106 and 13107) there were no lead pencil marks. Upon presentation of the sight draft, it was paid and the proceeds came back to San Francisco. Upon receipt of the proceeds of the sight draft in the sum of $11,107.50, without any request from the receiver or official or employee of the Richfield Oil Company, the bank credited the account of the receiver with the net proceeds of the draft. With respect to the proceeds of drafts which were received by the bank prior to the appointment of the receiver and deposited to the account of the Richfield Oil Company, nobody connected with the Richfield Oil Company requested us to deposit these proceeds to their account. To my knowledge there is no correspondence on this subject. With respect to the proceeds of those drafts [283] which were deposited prior to the receivership and which proceeds were received by the bank after February 26, 1931, credited to the account of the receiver without claim of offset, no request of any kind came from the receiver or any employee of the Richfield Oil Company or from any employee of the receiver requesting the credit of those moneys to the receiver's account. The net proceeds derived from these drafts amounted to $26,464.13. Out of the drafts which were sent by the Richfield Oil Company prior to the appointment of the receiver to Wells Fargo Bank, whether for collection or whether as security, we turned over to the Richfield Oil Company $5,255.86 and to the receiver $26,464.13, aside from the balance of $7,700.00 hereinafter referred to.

(Testimony of W. J. Gilstrap.)

I knew that on the 15th day or the 16th day of January, the bank exercised what it claimed to be its right of setoff against the funds of Richfield in the bank. These funds were subsequently restored. To my knowledge the bank did not during January, 1931, attempt to exercise its alleged bankers lien upon any of the drafts deposited with the bank for collection.

(The foregoing testimony commencing with the words "To my knowledge" was objected to by counsel for defendant on the ground it was incompetent, irrelevant and immaterial and the opinion and conclusion of the witness. Objection overruled and exception noted.)

The bank could not issue acceptances based upon the open credit of the Richfield Oil Company nor was it the bank's intention so to do. The acceptances that the bank was then releasing were intended to be accepted and released upon some security. If the transaction had not been a continuing or revolving one the bank would only have required security which was satisfactory to the bank for the acceptances actually released.

(The foregoing testimony commencing with the words "If the transaction" was objected to by counsel for defendant as hypothetical. Objection overruled and exception noted.)

Ordinarily if the bank had received a sight draft for $4,850.00 in excess of the acceptances accepted and released secured [284] by a shipment, the value of which amounted to nearly a quarter of a million

(Testimony of W. J. Gilstrap.)
dollars, the bank would have been properly secured for the $115,000.00 of acceptances released. Of course, it would depend upon the nature of the transaction.

(The foregoing testimony was objected to by counsel for defendant as speculative, hypothetical, incompetent, irrelevant and immaterial, and calling for the opinion and conclusion of the witness. Objection overruled and exception noted.)

In none of the conversations which occurred between me and Mr. Pope or Mr. Hall or any official of the Richfield Oil Company, was any mention made that any part of the $625,000 indebtedness would be required to be paid to the bank out of the proceeds of any of the drafts. The indebtedness of $625,000 was never mentioned by me or by any other official of the bank in my hearing, in the discussions with Pope or Hall. I did not read over the acceptance agreement paragraph by paragraph with either Mr. Hall or with Mr. Pope. That part of the agreement which refers to any indebtedness except the indebtedness to be created as the result of the acceptance and the issuance and release of acceptances was not referred to either by me or any other official of the bank in the presence of Mr. Hall and Mr. Pope or either of them.

On the 26th day of February, 1931, the $25,000 acceptance was paid, satisfying in full all acceptances issued under both of the acceptance agreements. My testimony with respect to the fact that

(Testimony of W. J. Gilstrap.)

there was no discussion of the contents of the first acceptance agreement applies also to the second acceptance agreement. The $625,000 indebtedness was never mentioned by myself or any other official of the bank in my presence and hearing to Mr. Hall or Mr. Pope at any time until May 8, 1931, nor was the fact mentioned that in the event that indebtedness of $625,000 would mature and was not paid that any of the other obligations under the agreement would become due or payable. We had collected the proceeds of certain drafts which, after applying $1,499.70 thereof to the extinguishment of the $25,000 worth [285] of acceptances, left in our hands $7,749.58. I then wrote the letter dated February 26, 1931, marked Plaintiff's Exhibit 107. Up to that time no request had come from anybody connected with the Richfield Oil Company to have these funds credited to the account of the receiver. When I dictated this letter I had in mind our telegram of January 16th. I stated in the letter that I was holding the remainder of the proceeds in accordance with the notice given by that telegram. I then received from the receiver the wire marked Plaintiff's Exhibit 109, asking me to repeat the bank's wire of January 16th. I then sent the wire marked Plaintiff's Exhibit 110 to the receiver, which included a copy of the bank's wire of January 16th. After sending this telegram I received from the receiver the letter marked Plaintiff's Exhibit 106, advising us that all banks had transferred

(Testimony of W. J. Gilstrap.)

the total amount of deposit to the credit of the Richfield Oil Company, and requesting the credit of the remainder of the proceeds in the sum of $7,749.58 to the account of the receiver. I then wrote to the receiver the letter dated March 5, 1931, marked Plaintiff's Exhibit 108, stating that in accordance with the request of the receiver we were crediting the account of the receiver with the sum of $7,749.58. Before that letter was written there was considerable discussion, but not with anybody connected with the Richfield Oil Company. It was also stated in the letter that we were crediting the receiver's account with $11,082.51 which represented the proceeds of the sight Birla Bros. draft deposited with the bank the 9th of January, 1931. There was no request for that sum from the receiver or from anybody else. From the time that we returned the $7700 and credited the receiver's account with $11,000, until the 8th of May, we collected from time to time outstanding drafts which had been deposited with us prior to the date of the appointment of the receiver, and credited the net proceeds to the account of the receiver without having any conversation with any official of Richfield Oil Company or the receiver or any [286] representative of the Richfield Oil Company or the receiver.

Outside of the telegram of January 16th and outside of the action of the bank in setting off the cash balance in its possession to the credit of the Rich-

(Testimony of W. J. Gilstrap.)

field Company at the time the receiver was appointed and outside of the letter which has been marked Plaintiff's Exhibit 107, the bank to my knowledge did not exercise or attempt to exercise any alleged bankers' lien or setoff against the drafts or proceeds of drafts or any of the property in its possession or under its control prior to May 8, 1931.

(The foregoing testimony commencing with the words "Outside of the telegram" was objected to by counsel for defendant on the ground that it was incompetent, irrelevant and immaterial. Objection overruled and exception noted.)

Shortly after the telephone conversations of May 8, 1931, Mr. Hall came to San Francisco. He told me that it had been the understanding that these funds should be kept separate and apart from other transactions of the bank. He made the same statement to Mr. Hellman, Mr. Eisenbach and Mr. Motherwell. At that time Mr. Lipman was in New York. Mr. Hall stated at that time that he had an interest in the transaction. That is the first time that he asserted that.

Up to the time that I sent the letter of December 16, 1930, marked Plaintiff's Exhibit 93, in which we notified Richfield of the receipt of the proceeds of the two Birla Bros. drafts, Nos. 103004 and 103006a, no reference had been made by us to the

(Testimony of W. J. Gilstrap.)

180 day drafts. Nothing was said in our letter of January 3, 1931, Plaintiff's Exhibit 95, referring to the receipt of the proceeds of draft No. 103010 in the sum of $11,031.14, regarding the two 180 day drafts.

At no time did we ever send any communication to the Richfield Oil Company or to the receiver in which we stated that the acceptance agreements or either of them contemplated a continuing or revolving credit, nor did the bank receive any such communication from Richfield Oil Company. After October 8, 1930, no conversation upon that subject occurred between myself and Hall or Pope. That subject [287] was not alluded to during the August visit of Mr. Hall. The only time it was mentioned was during the visit of Hall and Pope on the 6th of October, 1930.

Nothing was said regarding the 180 day drafts in our letter of January 6, 1931, marked Plaintiff's Exhibit 96, in which we informed the Richfield Oil Company that the $115,000 worth of acceptances had matured.

After the last $25,000 worth of acceptances were paid in full on February 26, 1931, we did not communicate with the plaintiff or with the officials of the Richfield Oil Company at any time prior to May 8, 1931, with reference to the 180 day drafts.

Redirect Examination

Referring to Plaintiff's Exhibit 122, the first entry under the date of October 6th and in the

(Testimony of W. J. Gilstrap.)

column "Documents Drawn Against", is the name of the boat "Silverray", and then the statement "17.400 cases of kerosene and 540 drums of fuel oil". Then the name "Silverhazel" and "95.000 cases of kerosene". The "Silverray" and "Silverhazel" refer to the names of boats. The 95.000 cases of kerosene refer to the shipment which went forward on that boat, represented by two sets of drafts, sight and 180 days sight. The statement "17,000 cases of kerosene 540 drums of fuel oil" is the shipment which went forward on the "Silverray". That is represented by two drafts, one sight and one at 180 days sight. The first entry on the page shows the initial acceptance of October 6th as drawn against the two shipments on the "Silverray" and the "Silverhazel". There are no drafts designated on the sheet. These entries refer to shipments to Birla Bros. covered by shipping documents which were transmitted by the letters of October 7th, Plaintiff's Exhibits 22 and 23.

The column entitled "Due in London" has no reference to the actual matter contained below it in this case. In this column are mentioned two things; first, the payments that we received in anticipation of acceptances; and second, several memoranda in regard to the [288] interest that we allowed the Richfield Oil Company on these anticipations. The interest and the payments received are shown in that entire column, and if added up will total ex-

(Testimony of W. J. Gilstrap.)

actly $155,000. In the column entitled "Balance Available", the first entry is $35,000. That represents the difference between the $150,000 credit and the $115,000 first drawn against. When the $115,000 acceptance was executed the balance available of $35,000 was placed in there. When the $5,000 acceptance was executed the balance was likewise carried forward reducing it to $30,000. When the $10,000 acceptance was executed the reduction was made and the balance available was then shown at $20,000. On November 28th, the Richfield Oil Company exceeded the original $150,000 by an additional $5,000 and it was necessary to increase the then balance available by $5,000. That was the time the new acceptance agreement was made. So the balance then shows as $25,000 available. When the last $25,000 worth of acceptances were executed, the balance was entirely wiped out and a zero was shown here, that is, there were no further funds available until some of these acceptances matured and were paid. The last entry is that of January 6th. That was made when the $115,000 in acceptances matured. $115,000 is then shown as available by Richfield. The last entry is the word "Cancel January 17, $115,000", entirely wiping out the possibility of this credit being availed of. That entry was made several days after the appointment of the receiver when this credit was withdrawn.

The first time that I had heard the words "Draft Reserve" was upon receipt of Plaintiff's Exhibit 28,

(Testimony of W. J. Gilstrap.)

the letter from the Richfield Oil Company, stating that they had a "draft reserve" of some $9,000 odd. These were words which I understood, but which had not been used in this transaction or suggested by me.

Said witness' attention was then called to some pencilled notations appearing at the bottom of the letter of Richfield Oil Company to Wells Fargo Bank & Union Trust Co. dated October 13th, and marked Plaintiff's Exhibit 28. These notations were in the form and in the words and figures as follows: [289]

"Calcutta		st	55900.76	Calcutta	180 d/s 55900.76
"		"	63950—	"	" 63950— "
Cali	60 d s	DA	2442.40		
La Paz		st	11031.14		
Cali	60 d s	DA	2441—		

With respect to said notations said witness testified as follows:

Upon this letter there are some pencilled notations in my handwriting. They were placed there when this letter was received and prior to my reply of October 15, 1930, Plaintiff's Exhibit 29. These figures represent all of the drafts which we had up to that time received from Richfield Oil Company. The computation of the so-called draft reserve is made from the figures on that paper. The second column represents only the two 180 day sight drafts, and the first column, all of the other drafts that we received from the Richfield Oil Company. I checked the Richfield Oil Company's figures of the so-called

(Testimony of W. J. Gilstrap.)

draft reserve by totalling the first column and subtracting therefrom the amount of the acceptances which had then been executed.

(The foregoing testimony commencing with the words, "Upon this letter there are" was objected to by counsel for complainant on the ground it was incompetent, irrelevant, and immaterial, not binding on complainant, hearsay and on the ground the letter was offered as a communication only without reference to the pencil notation. Objection was overruled and exception noted.)

Referring to Plaintiff's Exhibit 122, to and including the entry "Supported by B/C 46843", the only drafts which had been received by Wells Fargo Bank & Union Trust Co. were drafts set forth in my pencil memorandum appearing on Plaintiff's Exhibit 28.

When I handed the first four Birla Bros. drafts to the clerk in charge of the foreign collections, who is Mr. Desmond, I told him we were advancing the Richfield Oil Company against the collections certain amounts by means of acceptances, and that I wanted him to be sure to make a proper memorandum so that the proceeds of these collections when they were received would be handed to Mr. Clemo, the man who handled the acceptance finances.

(The foregoing testimony commencing with the words, "When I handed the first" was objected to by counsel for complainant on the

(Testimony of W. J. Gilstrap.)

[290] ground it was incompetent, irrelevant and immaterial, not binding on complainant, and hearsay. Objection was overruled and exception noted.)

That was the first transaction with Richfield. It is true that the proceeds of some of the earliest drafts deposited were not received in San Francisco until after the maturity of the acceptances. There were three items that were outstanding longer than ninety days. These were draft No. 103009 for $2,442.40 drawn on Ricardo Velasquez, deposited October 9th and paid January 28th; draft No. 103012, drawn on Bueno y Cia for $2,441, deposited October 12th, on which three partial payments were received, the first on February 24th and the last on April 11, 1931, the two final payments of which were received after the last maturity date of acceptances; and draft No. 103023, drawn on Sociedad Automovilia in the sum of $779.10, deposited October 21, 1930, which was never paid.

A draft drawn at 60 days sight would be payable 60 days after the drawee accepted it, which would be upon its presentation to him in the city of his residence. Before the proceeds could get to San Francisco, time would have to be allowed for transmitting the draft to the place where the drawee was and time also for the transmittal of the proceeds back and whatever time was consumed in presentation and receipt of proceeds by the correspondent bank. The time of the mail to Cali is estimated at 16 days, and to La Paz, 23 days.

(Testimony of W. J. Gilstrap.)

Referring to Plaintiff's Exhibit 122, the proceeds of draft B/C 46843 (Plaintiff's Exhibit 27, Richfield's No. 103010) together with the $119,626.05 received on December 16th in payment of Birla Bros. drafts were used to pay the $130,000 in acceptances maturing beginning January 6th to 19th. There was a balance in excess as the result of the total of $119,626.05 and the proceeds of said draft—leaving $617.12 which was carried forward to apply on the next maturing acceptance. The proceeds of this draft were applied in part upon other acceptances than the acceptance of $10,000 issued on October 21st.

The Richfield Oil Company was at all times during the course [291] of these transactions advised of the maturity dates of the acceptances.

Plaintiff's Exhibit 29, which refers to the issuance of the acceptance for $5,000, shows the maturity date of this acceptance.

Plaintiff's Exhibit 31, which relates to the acceptance for $10,000, sets forth the maturity date of this acceptance. The maturity date of the $25,000 worth of acceptances, confirmed in our letter, Plaintiff's Exhibit 35, is set forth in that letter. As to the $115,000 worth of acceptances in our letter marked Plaintiff's Exhibit 96, we informed Richfield Oil Company of the maturity of these acceptances.

It is fair to state that from the time of the issuance of the acceptances and to and including the

(Testimony of W. J. Gilstrap.)

respective maturities thereof, the Richfield Oil Company was at all times advised of the maturity dates upon the acceptances.

Recross Examination

With respect to Exhibit 122, referring to the $10,000 acceptance supported by B/C 46843, I was not in San Francisco on the date upon which the acceptance was issued. I was not in San Francisco on the date on which the draft itself was received. It was received by the 10th of October. I cannot remember whether Mr. Desmond handed that particular draft to me or whether he personally saw the transmittal letter which went forward to our correspondent. I have no recollection at the present time as to whether that particular transaction was discussed between me and Mr. Desmond.

At no time did the bank send a communication to the Richfield Oil Company indicating that the Richfield Oil Company had the right if it saw fit to have additional acceptances accepted by the bank and released upon securities theretofore received by the bank. [292] At no time did the bank ever send a communication to the Richfield Oil Company stating that either one of these two acceptance agreements was a continuing acceptance agreement or acting as security for any so-called revolving fund.

With respect to my pencilled notations on Plaintiff's Exhibit 28, there is nothing appearing on the

(Testimony of W. J. Gilstrap.)

face of the letter itself in lead pencil indicating that one group or the other group of the drafts was under the acceptance agreement. No copy of these lead pencil marks upon this letter was ever sent to Richfield Oil Company, nor was any official or employee of the Richfield Oil Company shown this original communication after I had placed the marks upon it.

With respect to Plaintiff's Exhibit 37, which contains a letter from Wells Fargo Bank to Richfield Oil Company requesting an additional $5,000 acceptance agreement from Richfield Oil Company, and which contains a letter from Richfield Oil Company to Wells Fargo Bank stating that the additional acceptance agreement was enclosed, and which stated, "In the future we will forward these agreements with the acceptances issued", we never responded to that letter and informed either Richfield Oil Company or any of its employees that no additional acceptance agreement was necessary in the event that additional acceptances were issued after the payment of any of the acceptances previously issued.

I knew that the sight drafts which had to be paid before the documents would be delivered to Birla Bros. would in all probability be paid prior to the date of the maturity of the $115,000 worth of acceptances.

The character of the paper taken under acceptances is not necessarily paper which would mature

(Testimony of W. J. Gilstrap.)

prior to the date upon which the acceptances themselves would mature. It is necessary for ac- [293] ceptances to be paid when they mature. The acceptances frequently find their way into the possession of persons other than the bank by which the acceptances are issued, and these persons expect to be paid upon the maturity date of the acceptances.

In so far as the 180 day sight drafts of Birla Bros. were concerned, they were unsecured as to any merchandise cover after the delivery to Birla Bros. of the documents representing the two shipments. They were clean paper at that time and there was no security behind them except the signature of Birla Bros. and the signature of the Richfield Oil Company.

When the $115,000 of acceptances had been extinguished by payment, the Richfield Oil Company could have obtained an additional credit of $115,000 represented by new acceptances provided that we had in our hands collections which would allow of our renewing the acceptances. Eliminating from consideration any other drafts that had been deposited with us, I would not have executed $115,000 of new acceptances based exclusively upon the 180 day sight drafts, that is, in so far as it is in my power to make any credit advances. An acceptance is issued against the movement of a shipment. It may have been already made; at least the shipping documents may have been already filled in. The

(Testimony of W. J. Gilstrap.)

bank issues acceptances based upon paper accepted by the consignee of a shipment where shipment has already been made and where the consignee is already in possession of the goods shipped. It depends upon the financial stability of the drawer and the drawee of the paper. In this case it would be the Richfield Oil Company and Birla Bros. Birla Bros. were not regarded by us as a firm of any financial stability.

The 180 day sight drafts could not have become due until some time in May, 1931. The $115,000 worth of acceptances matured on January 6, 1931. If the Richfield Oil Company had applied for and had actually obtained an additional acceptance aggregating $115,000 on January 6, 1931, those acceptances would have matured [294] on or before the 6th day of April, 1931, some considerable time in advance of the date upon which the 180 day drafts would have become due by their terms.

I knew on October 8, 1930, that upon the payment of the sight draft and the acceptance by Birla Bros. of the two 180 day sight drafts, the goods were to be delivered to Birla Bros.

Further Redirect Examination

If the sight drafts had not been paid, we would then have had an advance to the Richfield Oil Company on these acceptances of $115,000, and as security for that, the shipment to Birla Bros.

(Testimony of W. J. Gilstrap.)

Further Recross Examination

If the sight drafts had not been paid and the cargo had been at Calcutta, we would have first called on the Richfield Oil Company for payment of any acceptances then outstanding, and if that were not done we probably would have disposed of the cargo, and reimbursed ourselves to the extent of the acceptances from the proceeds of the cargo. It often occurs that if no paper taken by the bank is payable before the date of the maturity of the acceptances, the bank issuing the acceptances is unable to collect in advance of the maturity of the acceptances, even though the bank and the depositor assume at the time of the transaction that the proceeds of the drafts placed under the acceptances will be paid in advance of the maturity of the acceptances. In those instances, the concern to which the acceptances are released makes up the deficit.

Further Redirect Examination:

The letter of Wells Fargo Bank to Richfield Oil Company contained in Plaintiff's Exhibit 37 calls for a new $5,000 acceptance agreement and acceptance, because as stated in the letter, the $150,000 loaned them on the first acceptance agreement had been exceeded. [295]

It was not my function in 1930, nor it is now, to pass on credit or on advances to customers or on what security advances can be made.

WILLIAM DESMOND

a witness then called on behalf of defendant testified as follows:

Direct Examination:

I am a clerk in the employ of Wells Fargo Bank & Union Trust Co. I have been employed by the Wells Fargo Bank for approximately 13 years. In the year 1930, I was employed in the Foreign Collection Department. Mr. Gilstrap was my immediate superior. I was in the Foreign Department about a year. I am no longer in the Foreign Department.

I had charge of the Foreign Collection Department which took care of the documents for export shipments and I supervised that end of it. The transmittal of drafts to foreign correspondents was part of my duties.

The document entitled Defendant's Exhibit "F" is our file record evidencing the forwarding of the drafts, and is a carbon copy of a letter of transmittal. The handwriting in pencil on the right hand side of the document, "Security for Acceptance, proceeds to Clemo", is my handwriting. I put that handwriting on the document at or about the same time that these documents were sent forward with the letter of transmittal. The date of this document is October 8th. The original of this document was transmitted on the same day, October 8, 1930. I put this writing on the document at the request of Mr. Gilstrap. He told me to put

(Testimony of William Desmond.)

that statement on several bills there and that the proceeds of those documents were security for acceptances and were to be handed [296] to Mr. Clemo. The pencilled notations on each of Defendant's Exhibits "G", "H" and "I" in each case are in my handwriting. These notations were placed upon each of these documents on or about the date of the document pursuant to the instructions of Mr. Gilstrap.

Cross Examination:

The last time I was employed in the Foreign Department was about the end of the year 1930. I was in the Foreign Department approximately one year. I had routine work to do taking care of export shipments regardless of any specific instructions. My time was fully occupied during working hours in taking care of the business in connection with which my attention was required. After my separation from the Foreign Department I was assigned to a separate and distinct department and since then I have had nothing to do with the Foreign Department. There were a number of officers of the bank connected with the Foreign Department and I was subject to the directions and instructions of all of them. From time to time I took instructions not only from Mr. Gilstrap but likewise from other officials of the bank connected with that Department.

Aside from the pencilled memorandum on this

(Testimony of William Desmond.)

paper I never made any memorandum as to any instruction given to me by Mr. Gilstrap. The first time that I saw these documents after the date on which these entries were made was last evening. During the time I was connected with the Foreign Department I handled many thousands of copies of letters of transmittal. I received various instructions from time to time from my superior officers with respect to my duties. It is possible that these instructions if added together would be more than a thousand instructions during the time that I was in the Department. After separating myself from the Foreign Department I paid no further attention to the business of [297] the Foreign Department. I would say that I now have an independent recollection of substantially the majority of the instructions I received respecting work to be performed by me while I was in the Foreign Department. I wouldn't say that I could substantially tell the instructions and by whom they were given with respect to every transaction given my attention.

I dictated these letters of transmittal to a stenographer. I made the endorsement on these drafts on the date of the bills. These endorsements were made on the 8th day of October, 1930. My testimony is that they were made on that date and not on or about that date. After the letters were typed, I turned them over to Mr. Gilstrap. The copies

(Testimony of William Desmond.)

were filed. I turned over the original of the letters of transmittal to Mr. Gilstrap. Mr. Gilstrap never had in his possession so far as I knew any one of the four documents in evidence.

I have an independent and distinct recollection of the conversation occurring between myself and Mr. Gilstrap. I can give the sum and substance of it; possibly I cannot give the exact words. He told me, "Mr. Desmond, these bills are going forward to the respective parties and the proceeds are to be marked 'Security for Acceptance, proceeds to Clemo' ". There were 6 or 7 bills at first. I placed this endorsement upon the first 6 or 7 letters of transmittal.

I saw two or three of these papers last night. I did not talk to Mr. Gilstrap about this matter to refresh my recollection. Mr. Dinkelspiel asked me if this was my handwriting. Mr. Dinkelspiel did not mention any conversation occurring between me and Mr. Gilstrap. I had no conversation with any employee or official of the bank. I only talked to Mr. Dinkelspiel. Mr. Dinkelspiel merely asked me at whose instance I put this endorsement on there. Mr. Dinkelspiel only showed me two or three of these documents last night. Mr. Dinkelspiel told me that Mr. Gilstrap claimed that he had instructed me to place that endorsement upon those drafts. [298]

Mr. Gilstrap gave me one instruction to put the endorsements upon the first several bills.

(Testimony of William Desmond.)

I know that before the sight drafts could be paid the draft would have to go to Calcutta; that before the proceeds would be received at the bank they would have to return from Calcutta to San Francisco; that the 180 day drafts would not be paid for at least six months plus the necessary time for the bill to be presented at Calcutta for acceptance; and that the proceeds of the 180 day draft when received would have to be transmitted from Calcutta to San Francisco. Knowing that in all probabality the proceeds would not reach San Francisco for eight or nine months thereafter, I made these endorsements on the letters of transmittal. I made no entries in any other book that any of these drafts were under the acceptances. The documents upon which these pencil memoranda are made are kept in the correspondence files in an ordinary filing cabinet in the filing department. When Mr. Gilstrap handed the letters of transmittal to me he did not identify the specific bills by number, by date, by period or by amount.

The letters of transmittal were typed by the stenographer after I had received the instructions from Mr. Gilstrap. It was not necessary that I have the stenographer type on the carbon copies of letters of transmittal the fact that bills were being held as security for acceptances.

Redirect Examination:

The words "Security for Acceptance" did not

(Testimony of William Desmond.)

appear upon the original letters of transmittal to the correspondent in India.

(The words "Security for Acceptance" on each of defendant's exhibits "F", "G", "H", and "I" were here offered and received in evidence as parts of said exhibits, over objection of counsel for complainant that they were incompetent, irrelevant and immaterial, hearsay, and not binding on complainant. Objection was overruled and exception noted.)

EMIL LEUENBERGER

was then called as a witness for defendant and testified as follows: [299]

I am Assistant Vice President and Manager of the Foreign Department of the Wells Fargo Bank & Union Trust Co. I am familiar with various matters of the foreign business of depositors and customers of banking institutions, and I am familiar with acceptance agreements and bank acceptances.

I first met Mr. Hall during the latter part of August, 1930. I stepped out of a conference and saw Mr. Hall sitting at Mr. Gilstrap's desk. Mr. Gilstrap called me over and introduced me to Mr. Hall, who then told me that he was dissatisfied with the bank in Los Angeles and he desired to turn his foreign collection business over to us.

Nothing was said in my presence with respect to

(Testimony of Emil Leuenberger.)

partment business of the Richfield Oil Company. Nothing whatever was said by Mr. Hall with respect to the fact or the desire on his part that the foreign department business should be kept separate and apart from other business of the Richfield Oil Company with the Wells Fargo Bank.

In October, 1930, I received a telephone call from Los Angeles from Mr. Eisenbach, Vice President of our bank. He asked me to secure a credit report on Birla Bros. of Calcutta. I inquired for the report through our Calcutta correspondent, the Netherlands Trading Society. I received the cable marked Defendant's Exhibit "B" in reply.

I met Mr. Hall again on or about October 6, 1930. Mr. Gilstrap came into my office and asked me to step out and talk to the officials of the Richfield Oil Company about these shipments to Birla Bros. Mr. Gilstrap discussed with me the question of an advance to the Richfield Oil Company on the Birla Bros. transaction on the basis of acceptances. I stepped out and Mr. Hall introduced me to Mr. Pope, saying that Mr. Pope was an assistant who had come up to [300] San Francisco to get acquainted with the acceptance business. Mr. Hall then said, "We have a large shipment to Birla Bros., we are going to draw against this shipment to the extent of 50% at sight and 50% at 180 days sight, and we would like to get as much money as possible on this shipment." I said to Mr. Hall, "We cannot advance you the full amount of this

(Testimony of Emil Leuenberger.)

shipment, first because a large amount is involved, considering that the drafts are drawn on one and the same party; and second, the report that we have received of Birla Bros. is not favorable; we will, however, extend to you an advance to the extent of the sight draft of 50% of the value of the shipment." That is all that was said then.

Neither Mr. Hall nor Mr. Pope nor Mr. Gilstrap made any statement in my presence on the occasion of this conference on October 6th to the effect that Mr. Hall had any interest in the business of the Foreign Department of the Richfield Oil Company. There was no such statement made at any time in my presence. No statement was made either by Mr. Hall or by any one else in my presence that the transactions with the Foreign Department were to be kept separate and apart from other business and affairs of the Richfield Oil Company.

After this conference, Mr. Pope and I went to lunch and I explained to him the mechanics of the acceptance credits and took particular care to mention the credits that they contemplated with us. I told him about the acceptance credits, and about the revolving nature thereof and about the security of these collections. It is fair to state that Mr. Pope appeared to be substantially ignorant of acceptances and transactions under acceptance forms.

The letter marked Defendant's Exhibit "A", addressed to me, was shown to me after Mr. Hall's visit on October 8th, on which visit I did not see him. [301]

(Testimony of Emil Leuenberger.)

Cross Examination.

I have been the Manager of the Foreign Department of the Wells Fargo Bank for approximately three years. Before becoming Manager, I was for a period of approximately three years Assistant Manager of the Foreign Department. As Assistant Manager, I was constantly kept busy in the performance of the duties which devolved upon me in that capacity, and these duties became extended and enlarged after I became the Manager of the Foreign Department. During my office hours I am constantly occupied in taking care of the responsibilities incident to the office which I occupy. I do not always, but I generally, remember the conferences which I have had with the officials of the bank or with persons doing business with the bank during the past two to five years. I attend to and supervise a great many transactions every day. During the course of a month these transactions aggregate a great number. Between the month of October, 1930, and the present time, I have handled many thousands of transactions; and during that period of time I have come in contact with many thousands of customers and patrons of the bank. I do not undertake to charge my memory with each particular transaction and with what occurred in connection with each transaction. I made no memorandum concerning the conversations occurring between myself and Mr. Hall, and there is no memorandum in existence from which or by which I could refresh my recollection respecting either the conversation itself or the substance of the conversation. I have talked with Mr.

(Testimony of Emil Leuenberger.)

Gilstrap about this, and have discussed the matter to some extent with Mr. Hellman and with our attorneys. I read the letters introduced in evidence before the trial of this case commenced. In this way and by recourse to the various documents, I have endeavored to rebuild my recollection, which to some extent had faded until this case was being prepared for trial. [302]

I was in the presence of Mr. Hall about two minutes in August of 1930. I was engaged in a conference at the time and after talking to Mr. Hall I left and returned to the conference in which I had been engaged. I cannot say now who were present at this conference. I cannot say what the transaction was which was the subject matter of the conference. This conference lasted possibly an hour, although I have no definite recollection on it. I knew at the time I first met Mr. Hall in August of 1930 that the Richfield Oil Company was indebted to the Wells Fargo Bank in the sum of $625,000 and that that obligation was unsecured. I knew further that the obligation was outstanding.

I next saw Mr. Hall on October 6th. I fix that date from letters. I made no memorandum as to the subject matter of the conference or the substance of the conference occurring between me, Mr. Hall and Mr. Pope. I was with Mr. Hall and Mr. Pope approximately 10 minutes. I do not know with whom I last conferred that morning before Mr. Gilstrap called me into this conference. I do not know to

(Testimony of Emil Leuenberger.)

what particular business I was giving my attention at the time Mr. Gilstrap invited me into the conference with Mr. Hall and Mr. Pope. I cannot say with whom I next conferred after leaving Mr. Hall and Mr. Pope. I cannot give the subject matter of any business transacted by me in the bank on that day aside from the conference with Mr. Pope and Mr. Hall.

During the time that I was with Mr. Hall and Mr. Pope, the fact was not mentioned that if any acceptance agreement was entered into, that agreement might confer upon the bank security for its outstanding obligations.

On October 21, 1930, I received the letter marked Plaintiff's Exhibit 30. Mr. Gilstrap was in Los Angeles when this letter was received. The matter was turned over to me. I learned from the letter that draft No. 103010 had been sent to the bank and that Richfield Oil [303] Company was requesting that we issue an acceptance for $10,000. I wrote a response which is in evidence as Plaintiff's Exhibit 31, stating that we had executed the acceptance for $10,000 and credited the account of Richfield Oil Company with the proceeds and stating further that we had earmarked the same against our collection No. 46843 on La Paz, Bolivia. This was the only acceptance which I personally issued. This was at a time when undoubtedly my recollection was better so far as these matters are concerned than it is at the present time. The only

(Testimony of Emil Leuenberger.)

correspondence concerning any of those transactions with which I had anything to do is reflected and represented exclusively by these two letters.

At the time of my conversation with Mr. Hall and Mr. Pope on October 6, 1930, I did not see the acceptance agreement. They told me they were arranging for a shipment to Birla Bros. They told me the approximate amount of the shipment. They told me that the Richfield Oil Company wanted to get as much money as possible upon the acceptances. From the explanation they made to me at that time I knew that the documents evidencing the shipment were to be delivered to Birla Bros. upon the payment of a sight draft and the acceptance of the 180 day draft. I knew also from what they said that if the documents passed from the possession of our correspondent to Birla Bros. upon the payment of the sight draft and the acceptance of the 180 day draft that the latter draft was converted into what is known as clean paper, having no security under it at all except the signatures of the drawer and drawee. We had already received a report on Birla Bros. which was entirely unsatisfactory. On November 29, I wrote the letter, Plaintiff's Exhibit 36, setting forth the exchange of cables, advising that the two sight drafts drawn on Birla Bros., numbered 103004 and 103006A, respectively, had been paid. [304]

At no time did I write any letter to the Richfield Oil Company nor do I know of any letter being sent

(Testimony of Emil Leuenberger.)

to the Richfield Oil Company in which these transactions are referred to or stated to be a revolving or continuing transaction. I did not see Mr. Hall when he came to San Francisco about May 11, 1931.

Redirect Examination.

The letter marked Plaintiff's Exhibit 30, and the letter marked Plaintiff's Exhibit 31, written by me with respect to an acceptance for $10,000 issued against the draft on La Paz, was turned over to me by the acceptance clerk. Thereafter the entry was made by him on Plaintiff's Exhibit 122, "Supported by B/C 46843". That is the bank's number of the draft.

Recross Examination.

After dictating the letter, I told the acceptance clerk to see that the proceeds would be turned over to him for this particular purpose. At the time I dictated the letter, I assumed that it stated exactly what I wanted it to state. I dictated the letter of my own initiative and voluntarily. I turned the letter over to the acceptance clerk for the purpose of enabling him to read its contents with respect to the entry or entries that he was to make.

FREDERICK J. HELLMAN

was then called as a witness for defendant and testified as follows: [305]

Direct Examination.

I am Vice President in charge of the Foreign Department of Wells Fargo Bank & Union Trust Co. I have held that position for about three years, and this includes the fall of 1930, and the spring of 1931. I am familiar with the various methods of handling foreign collection business of depositors and customers and with the method of handling acceptance agreements and acceptance credit arrangements.

Some time in August. Mr. Gilstrap came to my office and informed me that Mr. Hall of Richfield was there, and that he was interested in an acceptance credit. I had a conversation with Mr. Hall at that time. To the best of my recollection I told Mr. Hall that I thought that we, meaning the Wells Fargo Bank, would be willing to go into such a transaction advancing them on their collections, and that I could see nothing that would stop us from doing it, but as long as they had other lines in the bank I would rather consult with Mr. Lipman first.

All that I discussed with Mr. Hall was the acceptance credit. I do not believe any amount was mentioned.

Mr. Hall and I then went downstairs to see Mr. Lipman. Up to this time Mr. Hall did not make any statement to me or to Mr. Gilstrap in my presence

(Testimony of Frederick J. Hellman.)

or to anybody else in my presence that the foreign business of the Richfield Oil Company was to be kept separate and apart from any other business of Richfield Oil Company with our bank. He did not make any statement in my presence to me or to Mr. Gilstrap or to any other person that he had an interest in the Foreign Department business of the Richfield Oil Company or that he was a partner in Richfield Oil Company's Foreign Department.

The purpose of the visit to Mr. Lipman was to have him [306] pass on the credit. We went into Mr. Lipman's office and I said to Mr. Lipman that Mr. Hall was representing the Richfield Oil Company; that he was the Manager of their export department, and that they had not been very well satisfied down in Los Angeles, and that he had been discussing advancing funds on their collections in the form of an acceptance arrangement.

I did not leave the office at any time while Mr. Hall and Mr. Lipman were discussing the matter. I remained throughout the entire conference and brought Mr. Hall upstairs afterwards. I think Mr. Hall was mistaken in stating that I left him alone with Mr. Lipman.

Mr. Hall told Mr. Lipman that they had a very good bunch of foreign customers and that all their collections or practically all their collections were paid without any trouble. Mr. Lipman said he thought it would be all right to open an acceptance credit but he wanted it understood that before we

(Testimony of Frederick J. Hellman.)

made any advance on their collections we would be able to check up through our foreign correspondence on their foreign customers. Mr. Hall said, "We have no objections, they are all right", or words to that effect. Mr. Lipman said to Mr. Hall, "Well it would be to your advantage to know what our banks think of your customers, it would be a help to the Richfield Oil Company".

Then the question came up of the amount of credit. I believe Mr. Lipman said to Mr. Hall, "We will advance you $150,000, $200,000, $250,000, on your foreign collections". He said to Mr. Hall that this credit was to remain in force until it was cancelled by either side; that we did not know whether it would work out or not; we did not know what kind of foreign collections they were handling, and if it did not work out we reserved the right to cancel the credit. As I remember it, we then stood up and we were going out [307] the door and Mr. Hall said to Mr. Lipman, "Mr. Lipman, I want it understood"—no, not that; he said, "You must realize that I am not in the financial end of the business; that I am only the Manager of the Foreign Department, and I will have to get the consent of my superiors to get this credit through". He further said that he knew we were giving them a line of credit of $625,000, and that if this acceptance credit was going to interfere with the loan line downstairs, he knew that they would not consent to it, and he wanted the acceptance credits separate from the loan downstairs.

(Testimony of Frederick J. Hellman.)

Mr. Lipman said to Mr. Hall, "I have no doubt that the loan downstairs is all right, Mr. Hall, this will be in addition to the $625,000." I am quite positive that the words "line of credit" were used. I don't think the conference with Mr. Lipman lasted more than five minutes.

During the conversation with Mr. Lipman I don't believe Mr. Hall stated at any time that he had an interest or participation of any kind with the Foreign Department of Richfield Oil Company.

Then we went upstairs and saw Mr. Gilstrap. On the way upstairs I decided that $150,000 was sufficient to start the credit off with, and so I took Mr. Hall back to Mr. Gilstrap and said it was all right; that we were going to start in for $150,000. Nothing else was said or done by Mr. Hall or Mr. Gilstrap or myself while I was present.

During the conversation with Mr. Lipman, the only reference that Mr. Hall made with my firmness was that it was to be in addition to the loan line downstairs; otherwise he did not think his people down in Los Angeles would make the credit. That was made immediately subsequent to his statement that he did not have authority to commit Richfield. [308]

The next time I saw Mr. Hall was in May, 1931, after the bank had told Mr. Hall that it was going to take over the proceeds of the drafts which are the subject of this litigation. About the 11th of May, Mr. Gilstrap called me out of my office informing

(Testimony of Frederick J. Hellman.)

me that Mr. Hall had come up to try to get us to change our opinion or change our course of action as to what we had done on the collections. I had a conference with Mr. Hall. Mr. Hall was quite eloquent in pleading with us to return the money. I remember more or less the words he used, which were, "You don't know what you fellows are doing to me holding out this money". He then told me that he had an interest in these transactions and that we were actually taking the money away from him; that the Richfield Oil Company was indebted to him for approximately $400,000, and that he felt very badly about the whole thing.

That was the first time that I had heard from any person whatever that Mr. Hall claimed to have an interest in the transaction.

As I remember it, on that occasion Mr. Hall did not make any statement to the effect that we agreed to keep this separate and apart.

I saw Defendant's Exhibit "B", being a telegram from the Netherlands Trading Society, on the 6th of October, 1930. I had a conversation with Mr. Gilstrap with reference to the contents of that telegram. I think this was during the visit of Mr. Hall because mention was made that they were very anxious to get as much on the shipment as possible. I did not participate in the conference with Mr. Hall and Mr. Pope on the 6th of October. I did not see Mr. Hall on the 8th of October, when he came back with the shipping documents and the

(Testimony of Frederick J. Hellman.)

drafts and the letter from the comptroller.

There was some discussion had between the officials of the [309] bank at about the time of the appointment of the receiver with respect to the collateral on deposit with the Foreign Department. I had a general discussion with Mr. Eisenbach and Mr. Motherwell on the same day as the appointment of the receiver. The telegram on January 16th was written after I had informed them about the transactions in the Foreign Department.

The bank from time to time returned to the Richfield Oil Company free of bankers lien or offset certain of the proceeds of various drafts that were collected from time to time. At the end of February, 1931, I recall a conference about the time that the $7700 was kept out from Richfield. With respect to Plaintiff's Exhibit 107, I had a consultation with Mr. Gilstrap before sending that letter, which was written under my direction. I am aware that the bank received a letter from Mr. McDuffie about this time, dated March 3, 1931, which is Plaintiff's Exhibit 106. Subsequent to the receipt of that letter I had a conference with officials of the bank with respect to handing back this particular lot of proceeds. At that time the City Service Company had just recently made an offer for 500,000 shares of Richfield common stock at $4.00 a share, and was very much interested in the purchase of the company, and it was decided between Mr. Lipman and myself that the money would be returned. Prior to

(Testimony of Frederick J. Hellman.)

transmitting the proceeds back to the Richfield Oil Company, as stated in the letter which is Plaintiff's Exhibit 108, there was a conference held between me and Mr. Lipman with reference to the subject matter of the letter which was subsequently written, and at that time there were facts known to me and to Mr. Lipman to the effect that the receivership of the Richfield Oil Company was in fair probability of being able to work itself out. The proceeds referred to in Plaintiff's Exhibit 108—$7749.55, were returned to the receiver. That letter was written under my instructions after my [310] conference with Mr. Lipman. There was also returned to the receiver the proceeds of the draft for $11,081.52 referred to in the letter.

Cross Examination

During office hours my time is filled up attending to matters connected with the bank and particularly in connection with the Foreign Department, but with no details. I was responsible to the bank for the proper, adequate and efficient management and control of the Foreign Department. As the control over the Foreign Department has been mine, my entire business hours are extensively occupied by giving my attention to matters in that Department. During every day I come in contact with a number of individuals calling at the Foreign Department. From time to time subordinates under me confer and consult with me respecting matters as-

(Testimony of Frederick J. Hellman.)

signed to them. I am not consulted in routine matters. During the period of three years that I have been in the Foreign Department, I have seen a great many hundreds of people doing business with that Department and I have been consulted on a vast number of occasions by my subordinates respecting matters in which they seek my advice and judgment. I am not in a position to determine with any degree of certainty any one of those transactions in which I have participated during the last three years, either with the depositor or patron of the bank or with the subordinates of my Department. It is not quite correct that this particular transaction was given no more attention by me than any other transactions of like character because every time we start a new credit it takes a great deal of thought and work.

I knew before the month of October, 1930, that the Richfield Oil Company was obligated to the Wells Fargo Bank to the extent of $625,000, and that at least before the 6th of October, 1930, [311] this represented an unsecured obligation. In August we had just given Richfield $125,000, so we thought they were in pretty good financial condition. I knew in a general way that Richfield Oil Company was obligated in some considerable sum not only to our bank but likewise to other banks throughout the country.

I have a memorandum made on the date of meeting with Mr. Hall and Mr. Lipman, from which I

(Testimony of Frederick J. Hellman.)

refreshed my recollection. I dictated that memorandum right after the meeting. The first time after the dictation of the memorandum that I next saw it was a few weeks ago when we went through our files in looking up this case. I did not have this particular conversation called to my attention from the date on which it occurred until approximately a few weeks ago when this case was about to be prepared for trial. I do not know who the last person was who was in my office immediately prior to the time that I talked to Mr. Hall. I have no recollection of any conference participated in by me on that day with any patron of the bank or any employee of the bank other than this particular one with Mr. Hall. I cannot give you the name of any individual with whom I came in contact that day outside of the employees of the bank or the substance of any conference I had with any individual on that day.

I listened to the testimony of Mr. Gilstrap and Mr. Leuenberger, and have been in consultation with them during the progress of this trial and in anticipation of the trial for the purpose of endeavoring to rebuild or recall things to my memory. I have examined all the correspondence in this case and have read it over very carefully. The only correspondence with which I personally came in contact during the history of this transaction did not total more than a half dozen communications, including wires.

(Testimony of Frederick J. Hellman.)

During the course of my conversation with Mr. Hall, I did not undertake to explain to him the contents of the printed form of the acceptance agreement. I did not tell Mr. Hall that if the form of acceptance agreement was signed by the Richfield Oil Company that [312] the original security that was put up upon the acceptance agreements would likewise stand as security for the $625,000 indebtedness which at that time was unsecured. So far as I know no other official of the bank had explained that situation to Mr. Hall. We never explain that. There is no memorandum of any kind in existence by which I can refresh my recollection as to what occurred between myself, Mr. Hall and Mr. Gilstrap prior to the time that I took Mr. Hall to Mr. Lipman's office.

During the conversation with Mr. Hall and Mr. Lipman, Mr. Hall said that he did not want the acceptances to interfere with the loan line downstairs. By "downstairs", I mean the Note Department. The note desk is downstairs and the Foreign Department is on the fifth floor. Mr. Hall said that he wanted these acceptance transactions to be considered separate from the loan line. He did use the word "separate". They had a loan of $625,000. If they repaid $100,000, presumably they could have raised it back again to $625,000. Mr. Hall did not say that he wanted it understood that the acceptance arrangement would be separate and apart from the indebtedness downstairs. He used the

(Testimony of Frederick J. Hellman.)

word "separate", and he referred to the loan of $625,000. The essence of the statement is that he wanted it considered separate from the loan line of $625,000. At the time this conversation occurred, Mr. Hall told me that the Richfield Oil Company wanted to get as large a sum as possible on the acceptance line. At no time did Mr. Hall say to me or to Mr. Lipman that the Richfield Oil Company was in a position to make any payment upon the $625,000.

I knew that an additional loan had been made to Richfield in July. This was not to meet interest.

When Mr. Hall came to San Francisco in May, 1931, I do not remember his having stated that it had been understood that the collections placed by him in the bank should be kept separate and apart from other transactions. I heard Mr. Gilstrap testify to the effect that Mr. Hall had said that he had an interest in these transactions and that they were supposed to have been kept separate and [313] apart. He had already had a conversation with Mr. Gilstrap. I was called out because the answer of Mr. Gilstrap on the subject had been "no". I went out and talked to him and while I was there those statements were not made. Mr. Hall told Mr. Gilstrap in my presence that the bank in Los Angeles was discounting the foreign paper of Richfield Oil Company.

(Testimony of Frederick J. Hellman.)

I did not see Mr. Hall or Mr. Pope when they called in the office the morning of October 6th, so have no knowledge whatever as to what transpired between Mr. Pope and Mr. Gilstrap and Mr. Hall and Mr. Leuenberger.

Redirect Examination:

In February, 1931, when the question of the receivership came up, I had occasion to go over the records and files of the bank and discuss this matter in question. After Mr. Hall gave his deposition I read over that deposition and advised my attorneys as to the part I disagreed with, and at their request I started to refresh my recollection from the records that were available.

Recross Examination.

I read from day to day all the letters that are sent out by the Foreign Department. They are all examined by me after they have been sent. We keep a copy in the Mailing Department that comes down to me every morning. I do not read the correspondence coming into the department unless I find it necessary. From time to time I had read each of the letters eminating from the bank that has been introduced in evidence by the plaintiff in this case. I read the letters from the bank in which it was undertaken to describe the collection of the proceeds of the drafts and the application of those proceeds in anticipation of acceptances. I never at any time sent to the Richfield Oil Company any letter undertaking to qualify the contents of any of

(Testimony of Frederick J. Hellman.)
the letters which we have introduced in evidence. In connection with the return of the proceeds amounting to $7700, referred to in the letter dated February 28, 1931, I read all of the [314] correspondence that passed between the Richfield Oil Company and the receiver and the bank.

I was familiar at least within a day after each of the letters of the Foreign Department was written by the bank, with each of the letters which has been introduced in evidence.

FREDERICK L. LIPMAN

was then called as a witness for defendant, and testified as follows:

Direct Examination

I have been engaged in the banking business something over 49 years. I have been connected with the Wells Fargo Bank & Union Trust Co., its predecessor, the Wells Fargo Nevada National Bank, and its predecessor, the Wells Fargo & Co., the whole period of 49 years. My present position with the Wells Fargo Bank & Union Trust Co. is president. I have held that position since 1920. I was president in the fall of 1930, and in the winter and spring of 1931.

I received a visit from a representative of the Foreign Department of the Richfield Oil Company in the month of August, 1930. This representative, Mr. Hall, stated that there had been some prior

(Testimony of Frederick L. Lipman.)

discussion as to this line of business, and I think I said something to the effect that if these drafts were good security, that is, if they were drawn on people we had confidence in, we could regard those as collateral for an acceptance credit. This representative assured me that the drafts were quite all right. I cannot make a credit for the bank without putting a figure on it. I suggested that the credit might be $150,000 or $250,000. We could not lay much stress between one sum or another because it was to be governed by these drafts. That appeared to be quite acceptable to this representative. [315]

I do not recollect that anything was said by Mr. Hall to me on that occasion that he was a partner of Richfield or had any participation with the Richfield Oil Company in the business of the Foreign Department of that company. Had such a thing been said, I certainly would have remembered it because we would not be dealing with the principal then if we were dealing with a mixed interest.

It seems to me that as the conversation came to an end Mr. Hall said something to the effect that he represented the Foreign Department and not the general treasury relations of the company, and he did not want the two mixed up; he wanted them kept separately. No discussion was had at that conference with respect to a bankers lien.

Subsequent to the appointment of the receiver, we tried to keep in touch with the affairs of the

(Testimony of Frederick L. Lipman.)

Richfield Oil Company in the hands of its receiver, and reports were made to me from time to time with respect to the affairs of Richfield.

The answer to the question as to whether on numerous occasions from and after the appointment of the receiver, the question of the Wells Fargo Bank's right, if it had any, to exercise a bankers lien against the proceeds of the drafts in the Foreign Department, is "no", because we never had any discussion as to our rights; we discussed procedure. The question asked me was, did we ever discuss our rights; the answer to that is "no".

At or about the time of the correspondence marked Plaintiff's Exhibits 106, 107 and 108, with reference to the return by the bank of the moneys which were then in its hands on collections from the Foreign Department, I recall discussions taking place with respect thereto. At that time I and other executives of the bank were in touch, or thought we were in touch with the financial con- [316] dition of the Richfield Oil Company.

JULIAN EISENBACH

was then called as a witness for defendant and testified as follows:

Direct Examination:

I am vice president of the Wells Fargo Bank & Union Trust Co. in charge of the Credit Depart-

(Testimony of Julian Eisenbach.)

ment. I have been connected with the Wells Fargo Bank & Union Trust Co. for 34 years. I have been vice president for 16 years. I am generally familiar with the affairs of the Richfield Oil Company and the loans of the Wells Fargo Bank to it prior to the receivership of that company. Since the receivership, I have endeavored to keep in touch with the affairs of the receivership, and I have from time to time conferred with Mr. McDuffie.

Mr. McDuffie has called upon the Wells Fargo Bank upon two or three occasions since his appointment as receiver, and has discussed with me and other officials of the bank the method of endeavoring to work out the affairs of the receivership.

In the latter part of September or the early part of October, 1930, I had some conversation with Mr. McKee, vice president and comptroller of the Richfield Oil Company, regarding some foreign credits. This conversation was in his office in the Richfield Building in Los Angeles. He brought up the question of foreign credit, and mentioned a large amount. That was some work that I had not been accustomed to handling. He mentioned some large amount in connection with a firm in Calcutta. I knew little or nothing about the thing, but in my position as head of the Credit Department I thought it was incumbent upon me to get some information as to the standing of that company. I went outside and telephoned [317] Mr. Leuenberger and asked him to check up this particular firm in Calcutta,

(Testimony of Julian Eisenbach.)

India. The name of the firm was Birla Bros. My conference with Mr. McKee took place prior to the receipt on October 6th of Defendant's Exhibit "F", the cablegram from Calcutta, India.

I am not connected with the Foreign Department of the Wells Fargo Bank and do not arrange for credits in the Foreign Department, so I did not have any negotiations with Mr. Hall or with any other representative of the Richfield Oil Company except this conversation with Mr. McKee prior to the establishment of the acceptance credit.

On the 15th day of January, I received information that the affairs of the Richfield Oil Company were about to be put in the hands of a receiver. I received the telegram from William C. McDuffie, as receiver, addressed to Wells Fargo Bank & Union Trust Co. under date of January 16, 1931, being Plaintiff's Exhibit 2.

I am acquainted with Mr. Nolan, formerly the head official of the Bank of America at Los Angeles. I do not recall any conversation had by me with Mr. Nolan on the 16th day of January with reference to some meeting of bankers that took place in Los Angeles. I am not prepared to state definitely that that conversation did not take place.

After the receipt of the telegram marked Plaintiff's Exhibit 2, we sent them a telegram. Prior to sending that telegram, the Wells Fargo Bank had not been doing anything with reference to a bank deposit standing in the name of Richfield Oil Com-

(Testimony of Julian Eisenbach.)

pany. Subsequent to the sending of that telegram we waited for an answer to come from Mr. McDuffie before doing anything in the matter. Prior to the time that this telegram was sent, I had information as to the existence of drafts and foreign collections in the Foreign Department, and prior to sending the telegram I communicated with Frederick Hellman, who was in charge of the Foreign Department, [318] and also with Mr. Motherwell, the vice president.

To the best of my recollection, I wrote that telegram at Mr. Motherwell's desk and conferred with him about it. Then I sent it up to him. He sent word out that it agreed with his conclusions and to send it out.

I received the telegram marked Plaintiff's Exhibit 13. I sent the telegram marked Plaintiff's Exhibit 14. The sum mentioned therein was transferred to the credit of the receiver of the Richfield Oil Company as stated in the the telegram.

On May 11, 1931, a telephone conversation took place between me and Mr. McDuffie. Mr. McDuffie rang me up and said, "I have just received notice that the bank has applied $145,000 on its lien, I am aware that you have reserved that right by your telegram of January 16th, and now you have exercised the lien, I don't think it is playing cricket". That is about all that Mr. McDuffie said. I told him that I was not aware of the fact as I had been in Los Angeles. I told him I would look into it

(Testimony of Julian Eisenbach.)

and ring him back. I am absolutely positive that Mr. McDuffie did not say that he considered it an absolute violation of the agreement that had been entered into between the banks or that he considered it a violation of his own agreement as represented by his telegram.

I met Mr. Hall shortly after the time that I had the conversation with Mr. McDuffie. To the best of my recollection Frederick Hellman brought him down to my desk. He wanted us to reverse our decision respecting our bankers lien. I told him that was a step that had been taken by Mr. Motherwell, another officer of the bank, and that he would have to see him. I took him downstairs immediately to see Mr. Motherwell, and he made a similar plea to him. The ultimate decision was "no".

As part of my duties I attempted to remain familiar with [319] the affairs of the Richfield Oil Company during the months of January, February, March, April and May, 1931, and I was aware of the ups and downs that took place during those months. I reported those ups and downs to Mr. Motherwell and Mr. Lipman. In the month of February, 1931, the condition was more up than down. In May, 1931, a very grave situation faced the Richfield Oil Company. I thought that bankruptcy was imminent.

Cross Examination.

I keep notes of the telephonic conversations occurring between me and other parties if it is im-

(Testimony of Julian Eisenbach.)

portant enough. I take them down in shorthand. I have been able to write shorthand ever since I left grammar school, about 38 years ago. It has been my practice all along in my notes and memoranda of important conversations to write them in shorthand.

I have been more or less familiar with the affairs of the Richfield Oil Company for some period of time prior to the date upon which Mr. McDuffie was appointed receiver of the Richfield Oil Company. This period would include three or four years. I made trips to Los Angeles prior to January 15, 1931, on the average of three or four times a year, and on these occasions had spent some time in investigating the financial affairs of Richfield. Shortly prior to the 15th day of January, 1931, I spent several days making an investigation with respect to the affairs of Richfield. During my examination into the affairs of Richfield I learned that it was obligated to a number of banks throughout the United States in a substantial amount of money —in an amount of approximately $10,000,000. I knew generally the financial situation of Richfield Oil Company prior to the month of October, 1931.

Prior to coming to the courtroom I had upon occasions conferred with officials of the bank for the purpose of refreshing [320] my recollection concerning the matters testified to here. I examined the correspondence that we had with Mr. McDuffie with respect to transferring the balance in the checking account and our bankers lien.

(Testimony of Julian Eisenbach.)

On or about the 7th day of May, 1931, I was in Los Angeles. My telephone conversation with Mr. McDuffie was four or five days after May 8, 1931. I think I was in Los Angeles on May 8, 1931. I had returned to San Francisco approximately two or three days before this telephonic conversation. Between the date of my return to San Francisco and the date upon which this conversation occurred, I had not heard anything at all about the bank offsetting any of the cash balance in its possession against the indebtedness due from the Richfield Oil Company. A few days prior to May 8, 1931, I had a conversation with Mr. McDuffie in Los Angeles. Between the date of that conversation and the date of the telephonic conversation between me and Mr. McDuffie, I had not communicated by letter or telephone or telegram with the bank, but I rendered a report when I returned to San Francisco. This report was in writing.

My telephonic conversation with Mr. McDuffie occurred several days after the 8th day of May, 1931. There is a way by which I can refresh my recollection so as to be able to tell the date on which that conversation occurred.

(Here the record shows that counsel for defendant handed to counsel for plaintiff a memorandum dated May 11, 1931.)

Until Mr. McDuffie gave me the information I had no knowledge that the bank had attempted to

(Testimony of Julian Eisenbach.)

exercise its bankers lien upon these particular collections.

Between the 15th of January, 1931, and my visit to Los Angeles during the early part of May, 1931, I made no inquiry of Mr. [321] McDuffie for the purpose of obtaining the financial condition of the Richfield Oil Company. I did not testify that anybody made a threat of bankruptcy. I said I thought bankruptcy was impending. Nobody had said that they were going to put them into bankruptcy. There was a danger of bankruptcy. I can name no individual who made any threat of putting them into bankruptcy. I knew that during the early part of February, 1931, the Richfield Oil Company had to meet its obligations to the State of California based upon its gasoline tax obligation, and that this was a very substantial obligation. There was a threat of danger back in January, 1931, but to a greater degree later on. I have not attempted to say that anybody told me that the Richfield Oil Company would be put into bankruptcy. My judgment told me that there was a danger of bankruptcy. The danger was not so acute in January and February of 1931. No petition to put the Richfield Oil Company into bankruptcy has ever been filed even down to the present time. I learned while I was in Los Angeles during the early part of May, 1931, that it was necessary for the Richfield Oil Company to pay taxes upon its property. I recall that among other things on or about the 15th or 16th of Jan-

(Testimony of Julian Eisenbach.)

uary, 1931, Mr. McDuffie sent to the bank a certified copy or at least a copy of the order appointing him receiver and that document came under my observation. I don't remember whether or not I read the order appointing him receiver.

We received the telegram marked Plaintiff's Exhibit 2. I read this telegram. After the receipt of this telegram I sent to the receiver the telegram dated January 16th, marked Plaintiff's Exhibit 3. Then a series of telegrams and correspondence passed between me and Mr. McDuffie.

To my knowledge Mr. McDuffie did not visit the bank during the period of time intervening between the 15th of January, 1931, and the 8th day of May, 1931.

I met Mr. Hall in San Francisco shortly after my return from Los Angeles. We participated in a brief conversation. I believe Mr. Gilstrap was present at the time of this conversation. I am [323] sure that during the course of this conversation Mr. Hall made no statement to me or to the other parties present that he had supposed that these particular funds were kept separate and apart from the general indebtedness due to the bank. I am certain that nothing of this kind occurred because it would have made a marked impression on me.

Redirect Examination:

My discussion with Mr. McDuffie on the occasion of my visit to him in Los Angeles prior to his telephone message of May 11, 1931, was on the

(Testimony of Julian Eisenbach.)

subject of the general standing of the company; a sort of progress report. There was no discussion as to the right of the Wells Fargo Bank to offset as against these foreign collections. During the period of time of the appointment of the receiver up to the month of May, 1931, the Richfield Oil Company had certain periods of financial stress and at one point the financial stress was met by borrowing money from the Cities Service Corporation and subsequently borrowing on receiver's certificates.

Recross Examination:

Aside from the telegrams relating to the question of set-off and restoration of funds, I had no communication from Mr. McDuffie from the date of his appointment and the date of my visit to Los Angeles.

Further Redirect Examination:

During this period of time I was in communication with Mr. Nolan and the other bankers investigating the affairs of the Richfield Oil Company. On the subject of the advance of moneys to the Richfield Oil Company, it is a fact that a representative of our attorneys went to Los Angeles and investigated it during the period in question.

R. B. MOTHERWELL

was then called as a witness for defendant and testified as follows: [323]

Direct Examination:

I am vice president of Wells Fargo Bank & Union Trust Co., and have held that position a little over five years. Prior to that time I was with the Federal Reserve Bank for a period of eight years. I have been in the banking world one way or another for the past fifteen or twenty years.

During the months of January, February, March, April and May of 1931, I participated in conferences in Wells Fargo Bank with respect to the affairs of Richfield Oil Company. During that period of time the condition of the receivership was under discussion many times. Mr. Eisenbach was delegated to the position of keeping in touch with the affairs of the Richfield Oil Company as they progressed from time to time during the receivership. He made reports from time to time to the executive officers of the bank and to me and to Mr. Lipman with respect to the affairs of the Richfield Oil Company and its receivership. During this period of time consideration was given in these conferences held in Wells Fargo Bank with respect to the bank's position with reference to a bankers lien or offset on the general indebtedness of the Richfield Oil Company to it. That was considered on more than one occasion. The fact that there were drafts collected and drafts in the process of collection by the Foreign Department of

(Testimony of R. B. Motherwell.)

Wells Fargo Bank was considered from time to time by me, Mr. Lipman, Mr. Hellman and other officials of the bank. I read Plaintiff's Exhibit 2 and discussed its contents with Mr. Eisenbach. Plaintiff's Exhibit 3 was considered by me and Mr. Eisenbach, and I am familiar with that document. Prior to the sending of the telegram there had been a discussion between me and Mr. Eisenbach, and I participated in the preparation of the telegram. We went over the telegram carefully. We had received information from Mr. Hellman with respect to the collections in the Foreign De- [324] partment then outstanding. He advised me that there were collections in the Foreign Department under process of collection under an arrangement with Richfield Oil Company.

As a banker, I have had experience with bankers liens and from time to time I have had the necessity of considering bankers liens. On the 16th of January, 1931, when I sent that telegram, I had a definite understanding as to bankers liens.

About May 11th or 12th, 1931, I met Mr. Hall. Mr. Eisenbach and Mr. Gilstrap brought him to my office. The tenor of the conversation with him was with respect to the restoration of the funds covered by certain collections to the receiver for the Richfield Oil Company.

Mr. Hall made absolutely no statement to me at that time that he had an interest in the collections in the Foreign Department of the Richfield Oil Company, nor did he say that there was an under-

(Testimony of R. B. Motherwell.)

standing with the Wells Fargo Bank that the matter was to be kept separate and apart.

Cross Examination:

I kept no memorandum of conversations occurring between me and Mr. Hall. Mr. Hall made no statement in my presence that he had supposed the collections had been kept separate and apart from the general indebtedness due to the bank. As vice president of Wells Fargo Bank & Union Trust Co. I am kept pretty busy during my office hours. I come in contact with many individuals, that is with many customers and patrons of the bank, as well as subordinates in the bank. My time is pretty well occupied in consulting with various customers and patrons of the bank and in attending to matters called to my attention by my subordinates in the bank. My time has been pretty well occupied in rendering that character of service from the date on which Mr. Hall's interview occurred down to the present time. [325] Until within the last few weeks my attention was not directed to the conversation occurring between myself and Mr. Hall in the month of May, 1931. I have talked about this matter with Mr. Gilstrap and Mr. Hellman for the purpose of refreshing my recollection so as to enable me to testify. Mr. Gilstrap did not tell me about his experience on the stand as a witness. I have talked very little about the case. I have looked at a few memoranda to refresh my memory and tried to get the dates.

(Testimony of R. B. Motherwell.)

At the time the telegram, Plaintiff's Exhibit 3, was prepared, I read over carefully the receiver's telegram to the bank dated January 16, 1931, and I was familiar with its contents at the time the telegram marked Plaintiff's Exhibit 3 was prepared.

Defendant then offered in evidence a letter dated March 14, 1931, from Wells Fargo Bank & Union Trust Co. to Heller, Ehrman, White & McAuliffe, and said letter was received in evidence and marked Defendant's Exhibit "M". Said letter requested Heller, Ehrman, White & McAuliffe to prepare a claim for the bank against the receiver of Richfield Oil Company, giving the name of the receiver, his address, and the date by which the claim should be filed.

Defendant then offered in evidence a letter from Heller, Ehrman, White & McAuliffe to Wells Fargo Bank & Union Trust Co. dated March 27, 1931. Said letter was received in evidence and marked Defendant's Exhibit "N". Said letter stated that the claim against the Richfield Oil Company had been prepared and was enclosed for the signature by the proper officer.

Defendant then offered in evidence a letter dated March 27, 1931, from Heller, Ehrman, White & McAuliffe to Wells Fargo Bank & Union Trust Co., and said letter was received in evidence and marked Defendant's Exhibit "O". Said letter stated that the claim of the bank against the Richfield Oil Company for services rendered by the

[326] bank as registrar was enclosed and requested that it be signed by the proper officer.

Defendant then offered in evidence a document entitled "Stipulation" with the title of the Court and cause of the action in which the receiver of Richfield Oil Company was appointed, and said document was received in evidence and marked Defendant's Exhibit "P". Said document was a stipulation between William C. McDuffie, receiver, and Wells Fargo Bank & Union Trust Co., by which it was stipulated that the petition of Wells Fargo Bank & Union Trust Co. for an Order directing (Testimony of R. B. Motherwell.)
the receiver to accept an amendment to its proof of claim might be filed and that an Order be made authorizing the bank to file the amendment to proof of claim and instructing the receiver to receive the same for filing. It was further stipulated therein that the acceptance of proof of claim for filing would be without prejudice to the rejection thereof or the making of any objection to its contents and without prejudice to the rights of the receiver in the present action.

Defendant then offered in evidence an Order of the Court in the action by which the receiver was appointed by which it was ordered that defendant be authorized to file its amendment to proof of claim; that the receiver be instructed to receive and accept the same for filing, and that the same was without prejudice to the rights of the receiver in the same respects as hereinabove set forth with respect to the stipulation. Said document was re-

(Testimony of R. B. Motherwell.)
ceived in evidence and marked Defendant's Exhibit "Q".

Defendant then offered in evidence an amendment to proof of claim filed in the action by which the receiver of the Richfield Oil Company was appointed and said document was received in evidence and marked Defendant's Exhibit "R". Said document stated that at the time of the preparation of the original claim against the [327] receiver for the general indebtedness of Richfield Oil Company to Wells Fargo Bank & Union Trust Co. the information for said claim had been compiled and delivered by the Note Department of the Wells Fargo Bank & Union Trust Co., which was a separate department from the Foreign Department; that said Note Department had no records in its department of collateral or other security deposited with the Foreign Department, or any other department; that through inadvertence and lack of knowledge by the Note Department said original claim stated that there were no offsets or counterclaims to the debt set forth in said claim and that no securities were held by the claimant for said indebtedness, whereas the facts were that unknown to the Note Department the drafts and the proceeds thereof involved in the present action were held in the Foreign Department as security for all of said indebtedness, and that pursuant to the terms of the acceptance agreements introduced in evidence in the present case these drafts were held as security for all liability of Richfield Oil Company to Wells Fargo Bank, and that pursuant likewise

to the laws of the State of California with respect to bankers' liens, claimant asserted a lien upon said drafts and upon all the proceeds thereof. Said claim further set forth the telegrams of the 16th of January, 1931, marked Plaintiff's Exhibits 2 and 3, and stated that by virtue of said telegrams the lien against these drafts and the proceeds thereof had been reserved.

Defendant rested.

Counsel for complainant then moved the Court for a Judgment in favor of complainant in the sum of $144,758.79 principal, being the principal sum upon the drafts in litigation heretofore collected by defendant and then in its possession, together with interest on that sum at the legal rate from the date on which said moneys came [328] into the possession of defendant to the date of Judgment.

It was then stipulated that the Amended Bill of Complaint be considered amended so as to pray for a money judgment.

Counsel for defendant thereupon moved the Court to strike the testimony of Mr. Nolan and Mr. McDuffie in so far as the same relates in any manner whatsoever to a conference or purported conference held at Los Angeles at, about or subsequent to the appointment of the receiver, between Mr. McDuffie and the various bankers, said motion being made upon the ground that the defendant Wells Fargo Bank & Union Trust Co. was not present or represented at that conference; that

what took place was out of the presence of the defendant and is not binding in any way upon it. Furthermore, that this testimony as to what was said and done at that conference is hearsay with respect to defendant and is not binding upon it. Counsel for defendant further moved the Court to strike from the record all testimony given upon direct examination or otherwise by Mr. Hall and Mr. Pope with respect to any agreement or purported agreement between Richfield Oil Company and Wells Fargo Bank & Union Trust Co., or between Mr. Hall and Wells Fargo Bank & Union Trust Co., that there be kept separate and apart the transactions of the Foreign Department of Richfield Oil Company with the Foreign Department of Wells Fargo Bank & Union Trust Co. from other general transactions of Richfield Oil Company with the bank, said motion being made on the ground that testimony with respect to said agreement or purported agreement is an attempt by parol evidence to change the terms of a written agreement, which agreement had been introduced by complainant in evidence and which binds the complainant and no evidence can be introduced to change by parol the terms of that agreement, said agreement referred to being "Acceptance Agreement", Plaintiff's Exhibit 16. [329]

Counsel for defendant then further moved the Court that Judgment for the defendant be entered, that complainant take nothing by his complaint, and that defendant be hence dismissed with costs of suit and for such further relief as the Court may grant, quieting the title of this defendant to

the proceeds of the drafts, the subject matter of this litigation.

Counsel for defendant further moved the Court for Special Findings of Fact and Conclusions of Law, as per request theretofore served on counsel for complainant and filed in writing with the Court, as follows:

> "Comes now WELLS FARGO BANK & UNION TRUST CO., the defendant in the above entitled action and hereby requests the Court, that, in rendering and making its Judgment in the above entitled action, said Court make specific Findings of Fact and Conclusions of Law upon the following issues included in said action as follows:
>
> FINDINGS OF FACT
>
> 1. The drafts, the proceeds of which are the subject of this action, were deposited by the Richfield Oil Company of California with defendant herein under and by virtue of a written contract designated 'Acceptance Agreement', dated October 4, 1930, executed by said Richfield Oil Company of California, and under and by virtue of the supplemental acceptance agreement dated November 28th, 1930, each of which said agreements provides that any and all documents of title, money and goods held by said Wells Fargo Bank & Union Trust Co. as security for any acceptance of said Richfield Oil Company of California, shall also be held by said Wells Fargo Bank & Union Trust Co. as security for any other

liability from said Richfield Oil Company of California to said Wells Fargo Bank & Union Trust Co. whether existing at the time of the execution of said agreements or thereafter contracted.

2. There was only one agreement with respect to said drafts or any thereof and the proceeds thereof existing between defendant Wells Fargo Bank & Union Trust Co. and said Richfield Oil Company of California, and said agreement consisted of the aforesaid acceptance agreement dated October 4, 1930 as supplemented by the acceptance agreement dated November 28, 1930. All drafts for presentation or collection in foreign countries deposited by said Richfield Oil Company of California with defendant from the seventh day of October, 1930 up to January 15, 1931, the date of the appointment of the plaintiff as receiver herein, were deposited pursuant to said agreement, and in this respect the Court finds that there was no agreement entered into between said Richfield Oil Company of California and defendant that any of said drafts were to be deposited solely for the purpose of collection or otherwise than under said agreement and pursuant to the terms, conditions and covenants thereof. [330]

3. The drafts and proceeds which form the subject of this action are and at all times since the appointment of the receiver of said Richfield Oil Company of California have been sub-

ject to defendant's right of set off or bankers' lien for the past due indebtedness of said Richfield Oil Company of California to defendant in the sum of $625,000.00 and interest.

4. No agreement was entered into at, prior or subsequent to the deposit of said drafts, the proceeds of which form the subject of this action, wherein and whereby defendant agreed to waive its right of set off or bankers' lien or in which the defendant agreed not to apply said drafts or the proceeds thereof against said indebtedness of said Richfield Oil Company of California to defendant in the sum of $625,000.00 and interest.

5. Defendant did not by any agreement, writing, statement, act or deed at, prior or subsequent to the deposit of said drafts or any thereof by said Richfield Oil Company of California waive its right of set off or bankers' lien or waive its right to apply said drafts or the proceeds thereof as against said indebtedness of said Richfield Oil Company of California to defendant in the sum of $625,000.00 and interest.

6. That no agreement was entered into at, prior or subsequent to the appointment of the plaintiff as receiver of said Richfield Oil Company of California wherein or whereby defendant Wells Fargo Bank & Union Trust Co. agreed to waive its right of set off or bankers' lien or in which said defendant agreed not to apply said drafts or the proceeds thereof as

against said indebtedness of said Richfield Oil Company of California to defendant in the sum of $625,000.00 and interest.

7. Defendant Wells Fargo Bank & Union Trust Co. did not by any agreement, writing, statement, act or deed at, prior or subsequent to the appointment of plaintiff as receiver of said Richfield Oil Company of California waive its right of set off or bankers' lien or its right to apply the said drafts or the proceeds thereof as against said indebtedness of said Richfield Oil Company of California to said defendant in the sum of $625,000.00 and interest.

8. Defendant Wells Fargo Bank & Union Trust Co. is not estopped by any agreement, writing, statement, act or deed to exercise its right of set off or bankers' lien or its right to apply the said drafts or the proceeds thereof as against said indebtedness of said Richfield Oil Company of California to defendant in the sum of $625,000.00 and interest.

9. Neither the plaintiff nor any other persons herein in any way involved were at any time directly or indirectly damaged or injured by any agreement, writing, statement, act or deed of defendant Wells Fargo Bank & Union Trust Co. with respect to the drafts and/or proceeds thereof subject of this litigation. [331]

CONCLUSIONS OF LAW

1. Under and by virtue of the said "Acceptance Agreement" dated October 4, 1930, ex-

ecuted by said Richfield Oil Company of California, and as supplemented by said acceptance agreement dated November 28, 1930, defendant is entitled to apply the proceeds of all the aforementioned drafts to the satisfaction of the said indebtedness of Richfield Oil Company of California to defendant Wells Fargo Bank & Union Trust Co. in the sum of $625,000.00 and interest.

2. Defendant Wells Fargo Bank & Union Trust Co. is entitled to apply the proceeds of all of said drafts to the satisfaction of said indebtedness of Richfield Oil Company of California to it under the provisions of law giving to said defendant a bankers' lien or right of set off.

3. Defendant Wells Fargo Bank & Union Trust Co. has not at any time by agreement, writing, statement, act or deed waived its right of set off or bankers' lien or its right to apply said drafts or the proceeds thereof to the satisfaction of said indebtedness of said Richfield Oil Company of California to it.

4. Defendant Wells Fargo Bank & Union Trust Co. is not estopped to apply said drafts or the proceeds thereof to the satisfaction of said indebtedness of said Richfield Oil Company of California to it.

5. Plaintiff, receiver herein, is not entitled to recover from defendant Wells Fargo Bank & Union Trust Co. in any sum whatsoever by reason of his complaint on file herein, and is

not entitled to any of the relief sought by him herein and this defendant Wells Fargo Bank & Union Trust Co. is entitled to be hence dismissed in this action with its costs of suit herein incurred.

Dated: San Francisco, California, this 16th day of July, 1932."

The cause was then ordered to be submitted upon the filing of briefs by the parties.

The above and foregoing is all the material evidence introduced at the trial of said cause and all proceedings had in the trial thereof.

WHEREFORE Wells Fargo Bank & Union Trust Co., defendant and appellant, prays that the above statement of evidence be settled, approved and allowed by the above entitled Court as a true, full and [332] correct and complete statement of all the evidence taken and given on the trial of said cause for use on the appeal taken to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: this 13th day of November, 1933.

HELLER, EHRMAN, WHITE & McAULIFFE,
Attorneys for Appellant.

Service of the foregoing Engrossed Statement of Evidence and receipt of a copy thereof this 14th day of November, 1933, is hereby admitted and acknowledged.

SULLIVAN, ROCHE, JOHNSON & BARRY
GREGORY, HUNT & MELVIN,
Attorneys for Complainant and Appellee.

IT IS HEREBY STIPULATED that the foregoing Statement of Evidence is true and correct and is agreed to as a correct statement under Paragraph B of Equity Rule 75 and the lodgment thereof in the Clerk's office for the examination of the plaintiff and notice of such lodgment and the time when the same will be presented to the Judge for approval, are hereby waived, and the same may be approved by the Judge at once without notice.

HELLER, EHRMAN, WHITE & McAULIFFE,
Attorneys for defendant and appellant.

SULLIVAN, ROCHE, JOHNSON & BARRY
GREGORY, HUNT & MELVIN,
Attorneys for plaintiff and appellee.

The foregoing statement of evidence is in all respects hereby approved and settled as a true and complete statement of the evidence adduced on the trial of the above entitled action.

Dated: this 16th day of November, 1933.

FRANK H. NORCROSS,
United States District Judge.

[Endorsed]: Filed Nov. 16, 1933. [334]

(Title of Court and Cause.)

PETITION FOR APPEAL.

To the HONORABLE, FRANK H. NORCROSS, Judge of the United States District Court for the Northern District of California, Southern Division:

The petition of WELLS FARGO BANK & UNION TRUST CO., a [335] corporation, complainant herein, respectfully represents:

That your petitioner, the above named defendant, conceiving itself aggrieved by the decree made and entered on the 13th day of May, 1933, in the above entitled matter in the above entitled Court, does hereby appeal from said Order and Decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith.

WHEREFORE your petitioner prays that this appeal be allowed and that the amount of the cost bond be fixed and that said appeal be made returnable to the United States Circuit Court of Appeals for the Ninth Circuit according to law; and that a duly authenticated transcript of the records, proceedings and papers and exhibits upon which said Decree was made be filed with the Circuit Court of Appeals for the Ninth Circuit.

Dated: this 10th day of August, 1933.

HELLER, EHRMAN, WHITE & McAULIFFE,
Attorneys for petitioner and appellant.

Service of a copy of the foregoing Petition for Appeal is hereby acknowledged this 10th day of August, 1933.

GREGORY, HUNT & MELVIN
SULLIVAN, ROCHE, JOHNSON & BARRY
Attorneys for complaint and appellee.

[Endorsed]: Filed Aug. 10, 1933. [336]

(Title of Court and Cause.)

ASSIGNMENT OF ERRORS.

Now comes WELLS FARGO BANK & UNION TRUST CO., a corporation, defendant and appellant in the above entitled cause, and respectfully states that there are errors in the records, proceedings and decree in said cause in the District Court for the Northern District of California, Southern Division, and files the following Assignment of Errors upon which it will rely in the prosecution of the appeal here- [337] with petitioned for in said cause from the decree of said Court made and entered on the 13th day of May, 1933:

I.

The District Court for the Northern District of California, Southern Division, erred in granting a decree ordering the payment to complainant by defendant of the sum of $163,305.85, for the reason that it appears from the record in this case that defendant is entitled to retain said sum and that

complainant is not entitled to the same or any part thereof.

II.

Said Court erred in holding and deciding that the drafts, the proceeds of which are the subject of this action, were not deposited by Richfield Oil Company of California with defendant herein under and pursuant to the contract designated "Acceptance Agreement", dated October 4, 1930, executed by said Richfield Oil Company of California, or under and by virtue of the supplemental acceptance agreement dated November 28, 1930, each of which said agreements provides that any and all documents of title, money and goods held by defendant as security for any acceptance of said Richfield Oil Company of California shall also be held by defendant as security for any other liability from said Richfield Oil Company of California to defendant whether existing at the time of the execution of said agreements or thereafter contracted.

(a) Said Court erred in holding and deciding that the bankers acceptances drawn by said Richfield Oil Company of California on defendant were secured only by foreign drafts of said Richfield Oil Company of California of an aggregate amount slightly in excess of the amount of acceptances so issued, and only by drafts having a maturity shorter than the maturity of said acceptances, the [338] proceeds of which could be and actually were received by defendant in San Francisco at least one

day before the maturity date of the acceptances secured thereby.

(b) Said Court erred in holding and deciding that defendant did not have the right to apply the proceeds of the drafts which are the subject of this action to the payment of the past due indebtedness of said Richfield Oil Company of California to defendant in the sum of $625,000 and interest.

(c) Said Court erred in holding and deciding that said acceptance agreement dated October 4, 1930, as supplemented by said acceptance agreement dated November 28, 1930, did not constitute the sole agreement entered into between said Richfield Oil Company of California and defendant with respect to the drafts deposited by said Richfield Oil Company of California with defendant for presentation or collection in foreign countries during the period commencing October 7, 1930, and ending with the appointment of complainant as receiver of said Richfield Oil Company of California on January 15, 1931.

(d) Said Court erred in holding and deciding that there was an oral agreement entered into by and between said Richfield Oil Company of California and defendant whereby the drafts, the proceeds of which are the subject of this action, were deposited with defendant for collection only and not as security for the acceptances drawn by said Richfield Oil Company of California upon defendant.

III.

Said Court erred in finding that in the month of August 1930, or at any time, an oral agreement was entered into by and between said Richfield Oil Company of California and defendant that the transactions respecting the deposit and collection of said drafts [339] should be separate and apart from all other financial transactions of said Richfield Oil Company with defendant.

IV.

Said Court erred not alone in holding and deciding that there was an agreement between said Richfield Oil Company of California and defendant to the effect that the transactions respecting the deposit and collection of said drafts were to be kept separate and apart from all other transactions of said Richfield Oil Company of California with defendant, but said Court further erred in holding and deciding that such agreement constituted a waiver by defendant of its right to a bankers lien on said drafts and the proceeds thereof, and a waiver of its right to offset said proceeds against the past due indebtedness of said Richfield Oil Company of California to defendant in the sum of $625,000 and interest.

V.

Said Court erred in holding and deciding that the drafts, or any thereof, or the proceeds thereof, were not deposited in the ordinary course of busi-

ness and said Court further erred in holding and deciding that said drafts or any thereof or the proceeds thereof were deposited with defendant under a special agreement or for any special purpose or constituted a specific deposit or trust.

VI.

Said Court erred in holding and deciding that either prior to or subsequent to the appointment of complainant as receiver of said Richfield Oil Company of California, defendant by acts, conduct, writings or statements waived its bankers lien on the proceeds of said drafts or its right to apply said proceeds to the payment of the said past due indebtedness of the said Richfield Oil Company of California to defendant. [340]

(a) Said Court erred in holding and deciding that subsequent to the appointment of complainant as receiver of said Richfield Oil Company of California, defendant by agreement with complainant waived its bankers lien on the proceeds of said drafts and its right to apply said proceeds to the payment of the said past due indebtedness of Richfield Oil Company of California to defendant.

(b) Said Court erred in holding and deciding that defendant by agreement with the other bank creditors of said Richfield Oil Company of California waived its bankers lien on the proceeds of said drafts and its right to apply said proceeds to the payment of the said past due indebtedness of said Richfield Oil Company of California to defendant.

(c) Said Court erred in holding and deciding that the exercise by defendant of its bankers lien on the proceeds of said drafts and the application of said proceeds by defendant to the payment of said past due indebtedness of Richfield Oil Company of California to defendant was a violation of any agreement entered into by and between defendant and said other bank creditors of said Richfield Oil Company of California.

VII.

Said Court erred in holding and deciding that defendant had no right to a bankers lien on said drafts and the proceeds thereof as provided in Section 3054 of the Civil Code of the State of California, and no right to apply said proceeds to the payment of said past due indebtedness of said Richfield Oil Company of California to defendant.

VIII.

Said Court erred in admitting in evidence:

(a) Testimony adduced in behalf of complainant by the [341] complainant himself and the witness Edward J. Nolan as to a meeting held on or about January 15, 1931, between representatives of the bank creditors of said Richfield Oil Company of California, with the exception of defendant, and complainant, and all conversations and statements made at said meeting, the substance of which was an agreement that all cash balances of said Richfield Oil Company of California previously appropriated by said banks should be restored to the re-

ceiver of said Richfield Oil Company of California, and that in all cases where cash balances in said banks still stood to the credit of said Richfield Oil Company of California said banks would refrain from appropriating the same to the satisfaction of their claims against said Richfield Oil Company of California. Said testimony was incompetent, irrelevant and immaterial, hearsay, and not binding on the defendant, and its introduction was an effort on the part of complainant to assert an estoppel against defendant in favor of persons not parties to this action, to-wit, the other bank creditors of said Richfield Oil Company of California.

(b) Letters and telegrams introduced by complainant, marked Plaintiff's Exhibits 4 to 11 inclusive, as set forth in the narrative statement of evidence for an appeal of this cause, being communications from various bank creditors of said Richfield Oil Company of California to complainant relating to the restoration of such balances, said documents being incompetent, irrelevant and immaterial, hearsay, and not binding on defendant, and their introduction being an effort on the part of complainant to assert an estoppel against defendant in favor of persons not parties to this action, to-wit, the other bank creditors of said Richfield Oil Company of California.

(c) Testimony adduced in behalf of complainant purporting to establish an oral agreement between defendant and said Richfield [342] Oil Company of California to the effect that all transactions

concerning the deposit and collection of foreign drafts should be kept separate and apart from all other financial transactions of said Richfield Oil Company of California with defendant, the purpose of said testimony being to vary the terms of said written acceptance agreements providing that all collateral deposited as security thereunder should likewise stand as security for all other liabilities of said Richfield Oil Company to defendant, said testimony being for that reason not properly admissible.

WHEREFORE defendant and appellant prays that the said decree be reversed and for such other and further relief as to the Court may seem just and proper.

Dated: August 10, 1933.

HELLER, EHRMAN, WHITE & McAULIFFE,
Attorneys for Defendant.

Service of a copy of the foregoing Assignment of Errors is hereby acknowledged this 10th day of November, 1933.

GREGORY, HUNT & MELVIN
SULLIVAN, ROCHE, JOHNSON & BARRY
Attorneys for Complainant.

[Endorsed]: Filed Aug. 10, 1933. [343]

(Title of Court and Cause.)

ORDER ALLOWING APPEAL.

Wells Fargo Bank & Union Trust Co., a corporation, the defendant herein, having this day pre-

sented to the above entitled Court its petition for appeal, IT IS ORDERED that an appeal be [344] allowed to said Wells Fargo Bank & Union Trust Co., a corporation, petitioner herein and defendant in the above entitled action from the decree made and entered on May 13, 1933, against said defendant, and that said appeal shall be returnable to the United States Circuit Court of Appeals for the Ninth Circuit, and that a cost bond in the sum of Five Hundred Dollars ($500.00) be executed and filed.

IT IS FURTHER ORDERED that a duly authenticated transcript of the records, proceedings, papers and all the exhibits offered in evidence by either party upon which said decree was made, be filed with the United States Circuit Court of Appeals for the Ninth Circuit according to law, as prayed for.

Dated: August 10th, 1933.

FRANK H. NORCROSS,
District Judge.

Service of a copy of the foregoing Order Allowing Appeal is hereby acknowledged this 10th day of August, 1933.

GREGORY, HUNT & MELVIN
SULLIVAN, ROCHE, JOHNSON & BARRY
Attorneys for complainant and appellee.

Approved as to form, as provided in Rule 22.
GREGORY, HUNT & MELVIN
SULLIVAN, ROCHE, JOHNSON & BARRY
[Endorsed]: Filed Aug. 10, 1933. [345]

(Title of Court and Cause.)

COST BOND.

Know all men by these presents:

That we, WELLS FARGO BANK & UNION TRUST CO., a corporation, as principal, and HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation organized under the laws of the State of Connecticut and autho- [346] rized to transact a surety business in the State of California, as surety, are held and firmly bound unto WILLIAM C. McDUFFIE, as ancillary receiver of Richfield Oil Company of California, a corporation, in the sum of Five Hundred Dollars ($500.00) to be paid to said William C. McDuffie, as ancillary receiver of Richfield Oil Company of California, a corporation, his attorneys, successors and assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, by these presents:

SEALED WITH OUR SEALS AND DATED this 11th day of August, 1933.

WHEREAS, lately in the District Court for the Northern District of California, Southern Division, in a suit pending in said Court in the above entitled action, a decree was rendered against Wells Fargo Bank & Union Trust Co., a corporation, defendant in said action, and the said Wells Fargo Bank & Union Trust Co., a corporation, having obtained an Order from said Court allowing an appeal from said decree of said Court, and a citation directed

to the complainant citing and admonishing him to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, State of California;

Now the condition of the above obligation is such that if said Wells Fargo Bank & Union Trust Co., a corporation, shall pay all the costs awarded or decreed against it by the Court in the above entitled action, then this obligation shall be void, otherwise to remain in full force and virtue.

WELLS FARGO BANK & UNION TRUST CO., a corporation,
By J. EISENBACH, V. P.
By E. H. SHINE, Assist. Cash.
Principal

HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation. By DONALD MOLLBERG, Its Attorney in Fact.

[Seal] Surety.

[347]

The within bond is hereby approved this 11th day of August, 1933.

FRANK H. NORCROSS,
District Judge.

Service of a copy of the foregoing Cost Bond is hereby acknowledged this 11th day of August, 1933.

GREGORY, HUNT & MELVIN
SULLIVAN, ROCHE, JOHNSON & BARRY
Attorneys for complainant and appellee.

[Endorsed]: Filed Aug. 11, 1933. [348]

(Title of Court and Cause.)

PRAECIPE DESIGNATING PORTIONS OF RECORD TO BE INCLUDED IN TRANSCRIPT ON APPEAL.

To the Clerk of the above entitled Court:

YOU ARE REQUESTED to make a transcript of record to be [349] filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal allowed in the above entitled cause and to include in said transcript of record the following and no other papers or exhibits:

(a) Ancillary Bill of Complaint in Equity;

(b) Answer and defenses to Ancillary Bill of Complaint;

(c) Ancillary Amended Bill of Complaint in Equity;

(d) Answer and defenses to Ancillary Amended Bill of Complaint;

(e) Findings of fact and Conclusions of Law;

(f) Decree entered May 13, 1933;

(g) Opinion of the above entitled Court;

(h) Statement of Evidence;

(i) Petition for Appeal;

(j) Order Allowing Appeal and Fixing Amount of Bond;

(k) Cost Bond on Appeal;

(l) Assignment of Errors;

(m) Citation on Appeal; and

(n) This Praecipe for transcript of record.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, on or before the 30th day of November, 1933.

HELLER, EHRMAN, WHITE & McAULIFFE,
Attorneys for appellant.

Service of the above Praecipe is hereby acknowledged this 17th day of November, 1933.

SULLIVAN, ROCHE, JOHNSON & BARRY
GREGORY, HUNT & MELVIN
Attorneys for appellee.

[Endorsed]: Filed Nov. 17, 1933. [350]

(Title of Court and Cause.)

CERTIFICATE OF CLERK.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 350 pages, numbered from 1 to 350, inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on appeal, as the same remain on file and of record in the above entitled suit, in the office of the Clerk of said Court and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing

transcript of record is $51.10; that the said amount was paid by the attorneys for the appellant, and that the original Citation issued in said suit is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 28th day of November, A. D. 1933.

(Seal) WALTER B. MALING, Clerk.

[351] By J. P. WELSH, Deputy Clerk.

(Title of Court and Cause.)

CITATION ON APPEAL.

UNITED STATES OF AMERICA —ss.

The PRESIDENT of the UNITED STATES, to WILLIAM C. McDUFFIE, as ancillary receiver of Richfield Oil Company of California, a corporation:

GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City and County of San Francisco in the State of California within thirty (30) days from the date hereof pursuant to an Order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, Southern Division, in a suit wherein Wells Fargo Bank & Union Trust Co,. a corporation, is appellant and you are appellee, to show cause, if any

there be, why the decree entered against the said appellant as in the said Order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the HONORABLE FRANK H. NORCROSS, District Judge for the Northern District of California, Southern Division, this 10th day of August, 1933.

FRANK H. NORCROSS,
United States District Judge.

Service of a copy of the foregoing Citation is hereby acknowledged this 10th day of August, 1933.

GREGORY, HUNT & MELVIN
SULLIVAN, ROCHE, JOHNSON & BARRY
Attorneys for complainant and appellee.

[Endorsed]: Filed Aug. 10, 1933. [352]

[Endorsed]: No. 7344. United States Circuit Court of Appeals for the Ninth Circuit. Wells Fargo Bank & Union Trust Co., a Corporation, Appellant, vs. William C. McDuffie, as Ancillary Receiver of Richfield Oil Company of California, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed November 28, 1933.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.